886.

SUPREME COURT OF THE UNITED STATES.

No. 52.

JAMES TODD, APPELLANT,

vs.

OTIS DANIELL.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

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Attest: JOHN MUSSEY, *Clerk.*

MAINE DISTRICT, *ss*:

At a Circuit Court of the United States for the first circuit, begun and holden at Wiscasset within and for Maine District, on Friday, the first day of October, in the year of our Lord one thousand eight hundred and forty-one: Present, the honorable Ashur Ware, district judge:

OTIS DANIELL, Plaintiff in Equity
vs.
WILLIAM C. MITCHELL and others, Defendants.

On the nineteenth day of July, in the year of our Lord one thousand eight hundred and thirty-six, the following Bill in Equity was filed in said court, by Peleg Sprague, Esquire, solicitor for the plaintiff, to wit:

Plaintiff's Bill.

To the Honorable the Circuit Court of the United States for the first circuit next to be holden at Wiscasset, within and for the District of Maine, respectfully complaining, sheweth unto your honors, your orator Otis Daniel of the city of Boston and State of Massachusetts, merchant, and a citizen of said State:

That, on the sixteenth day of June, in the year of our Lord eighteen hundred and thirty-five, William Wescott and David Wescott, of Portland, in the county of Cumberland and State of Maine, and both citizens of said State of Maine, and both deputy marshals for the district of Maine, under Albert Smith, Esquire, marshal of the U. S. for said district of Maine, William C. Mitchel and Tristram G. Mitchell and Erastus Hayes and Israel Waterhouse and Thomas Warren, all of Portland in the county of Cumberland in the State of Maine, traders, and all citizens of said State of Maine, and William Gooch, of North Yarmouth, in said county of Cumberland and State of Maine, physician, and a citizen of said State of Maine, were the owners, or claimed to be the owners, of ten undivided sixteenth parts of a certain tract of land, called and known by the name of the Ford Tract, situate in township number two, in the second range in Bingham's Kennebec purchase in the county of Somerset, and said State of Maine, bounded and described as follows, to wit: beginning at the northeast corner of said township; thence running west on the north line of said township about four and a half miles to the east line of a tract of land, sold to Capt. J. Heald; thence south on said east line, about two and a half miles to the south corner of said tract; thence west on the south line of said town, about one and three quarters miles to the west line of said township; thence south twelve hundred and sixty-eight rods; thence east three hundred and eighty-two rods to the corner

lots numbers 11 and 12 in the first range; thence north six hundred and sixty rods to the sixth range line of lots; thence east on said sixth range line about three and one half miles to the south west corner of No. 3 seventh range; thence north two hundred rods to a corner; thence east two hundred and forty-seven rods to a corner; thence north two hundred and forty rods to the tenth range line; thence east two hundred and twenty rods to the east line of said township; thence north on said east line about three miles to the first bounds; containing, according to the survey of Joseph Spaulding, fifteen thousand nine hundred ninety-one acres; and on the said sixteenth day, at said Boston, said William, David, William C., Tristram, Erastus, Israel, Thomas, and William, employed James Todd, of said Portland, in said State of Maine, trader and a citizen of said State of Maine, to sell and make a contract or contracts for the sale of said ten undivided sixteenth parts, or some other part or proportion of said tract, and gave to said Todd a written instrument or bond, authorizing him to sell and dispose of said ten sixteenths, or some part thereof, and binding themselves to convey the same to such person or persons as said Todd should contract with for the sale of the whole or any part of said ten sixteenths, and authorized and empowered said Todd to take such measures and use such means to effect a sale of the same as he should see fit, and the said William, David, William C., Tristram, Erastus, Israel, Thomas, and William, then and there delivered to the said Todd certain certificates and written statements and representations respecting the said tract of land, as follows: one purporting to be signed by Jonas Brown, Luther Moore, and said William Westcott, in the words, or to the effect following, that is to say:

"BINGHAM, *May* 13, 1833.

"We the subscribers do hereby certify, that we have this day returned of exploring the Ford tract, and our estimation is, that there is fifty millions, to speak within bounds, of prime pine timber, that is to say, as good as any on the Kennebec waters, and we have also examined the Austin stream, and find it sufficient to run the above timber in the Maine Kennebec river.

(Signed) "JONAS BROWN,
"LUTHER MOORE,
"WILLIAM WESCOTT."

And another, purporting to be signed by John Hill, in the words, or to the effect following, that is to say:

"This is to certify, that from the knowledge I have of the Ford tract, it is unquestionably one of the best timber tracts upon the Kennebec waters. And I would also state that I have just sold my interest in the Saco tract, being on part of the same stream, at seven dollars 50 cts. per acre.

(Signed) "JOHN HILL."

"PORTLAND, *March* 17, 1835."

And also certain other certificates, signed by certain other persons, being of the same substance and effect as those above mentioned, all which certificates were delivered to the said Todd as aforesaid, to be by him exhibited and represented as true and correct to such person or persons as he should negotiate with respecting the purchase of any part of said tract; and the said Todd there afterwards, on the said sixteenth day, employed one Thomas W. Haskins of said Boston, trader, to aid and assist him the said Todd in selling and disposing of said ten sixteenths, or some part thereof, and promised the said Haskins to pay him a compensation if any sale should be effected; and the said Todd then and there represented to said Haskins that the said tract contained, and that there was then standing thereon such a quantity of good pine timber suitable to be sawed into boards as was sufficient to make sixty million feet of boards, and that there were streams penetrating said tract suitable and sufficient to float and convey the said timber if placed thereon down to the Kennebec river and to a market; and that the said timber was well and conveniently situated for being cut and hauled to the said streams; and that the whole expense of cutting the said timber and conveying the same to a market would not exceed the sum of three dollars for each thousand feet, board measure. And the said Todd then and there exhibited and put into the hands and possession of the said Haskins, to be exhibited by him to such persons as he should negotiate with respecting the purchase of any part of said land, all the aforesaid certificates or written statements and representations respecting the said tract of land, and authorized the said Haskins to represent the same as correct and true, and represented and declared to the said Haskins, and authorized him to represent and declare to your orator and others, that the said Jonas Brown and William Wescott and John Hill were all men of integrity and respectability, acquainted with timber and timber lands, and competent judges thereof, and that they had not, nor had either of them, any interest whatever in the said ten sixteenths or in the sale of any part thereof, and that the said certificates and written representations might be confidently and certainly relied upon as correct. And the said Todd then and there further represented and declared to said Haskins, and authorized him to represent and declare to your orator and others, that he, the said Todd, held a bond executed by the owners of the said tract which gave and secured to him the said Todd or his assigns, the right at his or their option of becoming the purchaser of the said ten sixteenth parts of said tract by paying therefor at the rate of four dollars and fifty cents the acre, and that the said owners, who were the obligors in said bond, could then sell the said ten sixteenths for a larger sum and more money, than at the rate of four dollars and fifty cents the acre. And that they were anxious that the said Todd or his assigns should not become the purchaser under said bond, but that the time limited therein within which the said Todd or his assigns must make his or

their election to purchase should expire without such election, and that in fact, the said limited time would expire within one week from that day, and that he, the said Todd, was willing to sell the said land at the rate of five dollars the acre, and that he offered it at that price, because the time limited in the bond was so short, and that if he could have more time, he was very confident that he could sell said land for six or seven dollars the acre. That the said rate of five dollars the acre was very cheap, and that if he or his assigns should not make his or their election to purchase within the said time limited in said bond, that the owners would not sell the said land or any part thereof at so low a rate as five dollars the acre, because they could get more; and that as he verily believed the said land was worth seven dollars and a half an acre. And the said Haskins pursuant to the authority given him by the said Todd, and at the request of the said Todd, did at said Boston, on or about the seventeenth day of said June, exhibit and present the said certificates and written representations to your orator, and did then and there represent and declare that the statements therein contained might be relied upon as being true and correct. And did further represent and declare to your orator, that the said Ford tract so called, contained, and had then standing thereon, good pine timber suitable to be sawed into boards sufficient to make at least sixty millions feet of boards, and that the same was well situated, and could be easily cut and conveyed to a market; and that good and sufficient streams penetrated said tract; and did then and there make unto your orator all the said representations, declarations, assertions, and assurances, which had been made to him by the said Todd, and did advise and request your orator to become the purchaser of a part of said tract at the rate of five dollars the acre. And afterwards, on the said seventeenth day, the said Todd personally applied to your orator to become the purchaser of a part of said tract at the rate of five dollars the acre, to be paid as follows: one fourth part in cash, and one fourth part in one year, with interest; one fourth in two years, with interest, annually; and one fourth in three years, with interest, annually; and the said Todd did then and there in person ratify and confirm all the representations and declarations which had been made to your orator by said Haskins as aforesaid, and then and there in person, made unto your orator all the same representations and declarations and assertions which had been previously made by him to the said Haskins as aforesaid, and particularly, that the said tract of land then contained, and then and there had standing upon it, good pine timber sufficient in quantity to make at least sixty million feet of boards, and that the said certificates and written representations had been made and signed by men of integrity and intelligence, who were well acquainted with timber and timber lands, and competent judges thereof, and that all the statements contained in said certificates might be safely relied upon as true and correct.

And the said Haskins, at said Boston, on the same seventeenth of June, as the agent, and under the direction, and by request, of the said Todd, exhibited the said certificates, and made all the same representations, declarations, and assertions, which had been made to him by the said Todd as aforesaid, to Josiah Daniell, Barnum Field, James W. Champney, D. A. Sigourney, R. A. Molineux, E. F. Messinger, Jonathan H. Richards, all of said Boston, and John J. Soren, of Roxbury, in said State of Massachusetts, and to your orator; and your orator, relying upon all the said representations, declarations, and assertions, and certificates, made and presented to him by the said Haskins and Todd as aforesaid, and believing that the said Todd and the said Haskins were men of uprightness and veracity, and that their representations and statements might be safely relied upon, did, on the eighteenth day of said June, at said Boston, agree with the said Todd, to purchase three undivided sixteenth parts of said township, on condition, among other things, that the said tract then contained sufficient quantity of good pine timber to make sixty million feet of boards; and at the same time, said Field, Sigourney, Soren, Champney, Molineux, Messinger, Josiah Daniell, and Richards, did severally agree with the said Todd, to purchase, each for himself, a certain undivided part of said tract upon the same conditions; and a written contract was thereupon made between the said Todd, on the one part, and your orator and said abovenamed persons, on the other part, which is in the words, and to the effect following, that is to say:

"Articles of agreement made this eighteenth day of June, A. D. eighteen hundred and thirty-five, by and between James Todd, of Portland, in the State of Maine, of the one part, and Otis Daniell, Josiah Daniell, Robert W. Molineux, E. F. Messinger, Jonathan A. Richards, and James H. Champney, and Barnum Field, all of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, and Daniel A. Sigourney and John J. Soren, of Roxbury, in the county of Norfolk, and Commonwealth of Massachusetts, of the other part.

"The said Todd, in consideration of the agreements herein contained of said parties of the second part, hereby agrees with them respectively to sell and convey to them, by good and sufficient deeds, with warranty, and a good and indefeasible title, in fee simple, ten undivided sixteenth parts of a tract of land situated in township No. two, second range, Bingham's Kennebec purchase, east of Kennebec river, in Somerset county, State of Maine, containing sixteen thousand acres, called the Ford tract—to be conveyed to said parties of the second part, as follows: three undivided sixteenth parts to said Otis Daniell, two undivided sixteenth parts to said Josiah Daniell, one undivided sixteenth part to said Molineux and Messinger, two undivided sixteenth parts to said Daniel A. Sigourney and Jonathan A. Richards, one undivided sixteenth part to John J. Soren and James H. Champney, and one undi-

vided sixteenth part to said Barnum Field—the said parties of the second part paying for their purchase, their respective proportions of the sum of fifty thousand dollars, to be paid as follows: one-quarter part in cash, and the remainder one-third in one year, one-third in two years, and one-third in three years, with interest annually, secured by their respective notes and mortgages on the premises; and the said premises are to be conveyed to said parties of the second part, in the proportions above mentioned, at any time on demand, within sixteen days from the date of these presents; which time is allowed to said parties of the second part, to explore said tract. And the said parties of the second part, in consideration of said Todd's agreement, hereby agree with said Todd, to purchase and pay for their respective parts of said tract as before mentioned, and to give their notes and mortgages as before mentioned; and if they do not complete the purchase within the said term of sixteen days, they will respectively forfeit and pay to said Todd, their respective parts of the sum of three thousand dollars: Provided, nevertheless, that said parties of the second part, shall be under no obligation to take said land, or to pay therefor, unless said Ford tract contains sixty millions of pine timber, and a stream runs through said tract, which will, with an ordinary freshet, carry logs without difficulty from said tract to Kennebec river. In case said tract does not contain sixty millions of pine timber, and such a stream as is mentioned above, said Todd hereby agrees, with said parties of the second part, to pay the expense of one person to be sent from Boston to examine said tract; and, also, whatever may be paid to one other suitable person for exploring said tract, for the time he is on the tract. It is understood, if said parties of the second part, or their agent, notify said Todd of their agreement to take the said premises, at any time within sixteen days, they shall be allowed till July ninth, to make the payments and exchange the papers.

"In witness whereof, the said parties have hereunto interchangeably set their hands and seals.

(Signed)	"JAMES TODD,	[L. S.]
	"BARNUM FIELD,	[L. S.]
	"D. A. SIGOURNEY,	[L. S.]
	"JNO. J. SOREN,	[L. S.]
	"JAS. H. CHAMPNEY,	[L. S.]
	"R. W. MOLINEUX,	[L. S.]
	"E. F. MESSINGER,	[L. S.]
	"JOSIAH DANIELL,	[L. S.]
	"OTIS DANIELL,	[L. S.]
	"JONA. RICHARDS.	[L. S.]

"Signed, sealed, and delivered, in presence of—(three lines interlined on this page before signing.)

(Signed) S. E. Sewall, witness to Jas. Todd and Barnum Field.
Thos. W. Haskins, to all the remainder."

Which contract was duly signed, sealed, and delivered, by the said Todd and your orator, and said Field, Sigourney, Soren, Champney, Molineux, Messinger, Josiah Daniell, and said Richards. That your orator had never seen the tract of land, nor had any information or knowledge respecting the same, except what was derived from the said Todd and the said Haskins as aforesaid, which was well known to the said Todd. And your orator had no personal acquaintance with either of the said persons who signed the said certificates, and had never heard of either of them before; and as to the faith and credit to be given to the same, he relied entirely upon the representations made by the said Todd and the said Haskins, all which was then and there well known to the said Todd. And your orator, and said other persons, parties of the second part to said contract, thereafterwards on the said eighteenth day of June, did employ the said Haskins to go and personally explore the said tract, and requested him to employ some suitable person who was a good judge of timber and timber lands, to aid and assist him in examining the said tract, and ascertaining the quantity of good pine timber then standing thereon, and to make report thereof to your orator, and said other persons, parties to said instrument, and all which was then and there made known to the said Todd, who then promised and agreed that he would conduct the said Haskins, and such persons as he should employ to assist him, to the said tract, and show it to them so that they might explore and examine the same, and the timber thereon, and form a correct judgment and be enabled to make a correct report respecting the same. And, afterwards, the said Todd, without any request made by the said Haskins, and contrary to his wishes, and without the knowledge of your orator, gave information to said William, David, William C., Tristram, Erastus, Israel, Thomas, and William, who were the owners, or claimed to be owners, of said ten sixteenth parts, and deeply interested therein, and in making sale thereof; that the said Haskins was about to make said exploration, and the said David, William C., Tristram, Erastus, Israel, Thomas, and William, did then and there request and employ said William Wescott and the said Todd, to accompany the said Haskins in making said contemplated exploration, with intent that the said William Wescott and the said Todd should endeavor to induce the said Haskins, after such exploration, to make report to your orator and others, who had signed said contract, that the said tract contained as great a quantity of timber as was mentioned in said contract; and the said William Wescott and the said Todd, then and there represented and declared to the said Haskins, that the said William Wescott had no interest whatever in the said ten sixteenth parts, or in the sale thereof, or of any part thereof; and that the only reason for their wishing the said William Wescott so to accompany them was, that he, the said William Wescott, was well acquainted with the said tract, and the boundaries thereof, having been employed at a former time in conveying sup-

plies to persons lumbering thereon, and in exploring the same; and it was then and there represented by the said Todd to the said Haskins, that the said William Wescott was a man of integrity and honor, and that he had no interest in said ten sixteenths of said tract or the sale thereof. And the said Haskins then and there verily believed that the said William Wescott was wholly disinterested, and that his advice, information, judgment, and opinion, might be safely relied upon as proceeding without bias or personal interest. And, afterwards, the said Todd and the said William Wescott declared to the said Haskins, who was wholly unacquainted with the business of exploring timber lands, and unused to travelling the wilderness, that it would be necessary that they should have, in making said proposed exploration, a pilot well acquainted with the woods, and long accustomed to traverse the wilderness; and thereupon the said Todd and the said William Wescott employed one Luther Moore, to accompany said Haskins in making said proposed exploration. And the said Todd and the said William Wescott then and there represented to the said Haskins, that the said Moore was an honest and upright man, well acquainted with traversing the woods and with said tract, and competent to guide them in their proposed exploration, and that he had no interest or bias in relation to said exploration, or the sale of the said tract, or any part thereof, and that his judgment, opinion, and guidance, in such exploration, might be safely relied upon as correct. And the said Haskins, accompanied by the said Todd, William Wescott, and Moore, and also in company with one Thomas Chase and Robert W. Molineux, proceeded to make said exploration of said tract. And the said Todd, William Wescott, and Moore, conducted the said Haskins to a certain parcel of land which they showed and exhibited to him as being the said Ford tract, and showed to the said Haskins a quantity of pine timber as being and standing upon said Ford tract; and continued for the term of four days to conduct the said Haskins over certain lands, which they then and there declared to him constituted the said Ford tract. And they then and there represented and declared to him, that all the pine timber which he saw during that time, was standing upon the said tract, and that the same was sound and suitable to be sawed into boards; and they further represented and declared to him, that they conducted him in such manner upon said township, that he was successively seeing different parts thereof, and that no part thereof, or of the timber standing thereon, was shown to him a second time. And the said William Wescott, during the said four days, and while professing to exhibit to the said Haskins the timber upon said tract, very frequently expressed an opinion and judgment of the quantity of timber that there was upon said tract, and that the same was very large; and he then and there represented and declared to the said Haskins, that the said tract contained good pine timber sufficient to make at least eighty million feet of boards—and that he was confident that

the land would be purchased at a higher rate than five dollars the acre, immediately upon the expiration of the bond given to the said Todd, or even before that time, if your orator and said other persons should decline completing the purchase thereof. And that he had been informed by some person, whom he then named, that it had been a short time before, upon actual exploration, estimated to contain timber sufficient to make one hundred and five million feet of boards, and he had no doubt of the correctness of such estimate.

And the said William Wescott, during the whole time of the said exploration by the said Haskins, frequently and repeatedly endeavored to persuade and induce the said Haskins, by various means, representations, and declarations, to report to your orator, that the said tract contained good pine timber more than sufficient to make sixty million feet of boards; and the said William Wescott then and there with intent to deceive the said Haskins, and cause him to make a false report to your orator, did falsely represent and declare to the said Haskins, that he, the said William, had previously explored and knew the condition of a certain part of said tract, which the said Haskins had not seen, being the southerly end of the L. part, so called, and that the same had never been lumbered upon, and was then well timbered with good pine timber. And that he, the said William, had previously explored, and well knew the condition of, a certain other part of the said tract, which the said Haskins had not seen, and being the northeasterly part thereof, and that the same was very well timbered, with more pine trees to the acre, of a larger size, and better quality, than any which the said Haskins had seen, and sufficient in quantity to make many million feet of boards. And that he, the said William, had previously explored, and well knew the condition of, another part of said tract, being in the northwesterly part thereof, which the said Haskins had not seen, and that the same was better timbered than any other part of said tract, and contained good pine timber, of the best quality, sufficient to make many million feet of boards; all which said representations and declarations, as to said three several parts of said tract, were often repeated by said William to said Haskins. And the said Haskins, relying upon the said representations of the said William, and believing the same to be true, omitted to explore, and did not explore, and examine either of said three several parts of said tract abovementioned. And the said William then and there further represented and declared to the said Haskins, that no part of said tract had ever been burnt over, and that the value of the same was enhanced by the fact that it contained no burnt land.

And your orator avers that said part of said tract, near the end of the L. part, so called, had, before that time, been much lumbered upon, and the pine timber removed therefrom, and that it was not then well timbered with good pine timber; and that the said northeasterly part of said tract was not well timbered, and did not contain more pine trees to the acre, nor of a larger sizer, nor better

quality, than any which the said Haskins had seen, and that the pine timber thereon was not sufficient in quantity to make many million feet of boards; and that the said northwesterly part of said tract did not contain good pine timber, of the best quality, sufficient to make many million feet of boards; and that many hundred acres of said tract had, before that time, been burnt over, and the timber thereon wholly destroyed by fire; all which was then and there well known to the said William.

And your orator avers that the said William Wescott, wrongfully and knowingly, and with intent to deceive the said Haskins, Chase, and Molineux, and cause them, and particularly the said Haskins, to make a false report to your orator, so guided and conducted the said Haskins, Chase, and Molineux, or caused them to be so guided and conducted, in making said exploration, that they were shown and conducted through the same berths or glades of pine timber several times, and saw the same pine trees several times, thinking and believing that they were different berths or glades of pine timber and different trees.

And the said William Wescott wrongfully and knowingly, and with intent to deceive the said Haskins, and Chase, and Molineux, and cause them, and particularly the said Haskins, to make a false report to your orator, did so guide and conduct the said Haskins, Chase, and Molineux, or cause them to be so guided and conducted, as to exhibit to them great quantities of good pine timber as standing and being upon said Ford tract, when in truth and in fact, the same was not standing upon said Ford tract, but upon other tracts or parcels of lands adjacent thereto.

And the said William Wescott then and there represented and declared to the said Haskins, Chase, and Molineux, that all the timber which had theretofore been taken from the said tract, had been cut where the timber was scattering and inferior, and that none had ever been cut in the best berths and glades of timber upon said tract, and particularly that no timber had ever been cut upon the L. part, so called.

And said William Wescott then showed to the said Haskins certain timber then lying in the boom in the Austin stream, so called, which the said William Wescott then declared had been cut as aforesaid from the scattering and inferior timber upon said Ford tract, and the said William, then and there, by various other means, deceived the said Haskins, Chase, and Molineux. And the said Chase, who had been employed to aid and assist the said Haskins in making the said exploration, by the representations, declarations, and deceptions and means aforesaid, was induced by the said William Wescott and the said Todd to make a written certificate and statement in the words and to the effect following, that is to say:

"BINGHAM, *June* 26, 1835.

"I, the subscriber, do hereby certify that I have this day returned from exploring the Ford tract, in company with R. W. Molineux

and Thomas W. Haskins, of Boston, Massachusetts, and my estimation is that there is not less than four and a half thousand to the acre, on an average, of prime pine timber, as good as any on the Kennebec waters, and one and a half thousand of good spruce timber, (worth as much as pine,) also, to the acre. I have also explored the stream called the Austin stream, which runs through the tract, and do certify that I consider it a good and sufficient stream to run logs to the Maine Kennebec river.

" (Signed) THOMAS CHASE."

And the said Todd did subjoin and annex to the said certificate of said Chase a written statement and certificate in the words or to the effect following, that is to say:

"I hereby certify that I was also with Mr. Thomas Chase in exploring the Ford tract, and was fully satisfied that the estimation is within bounds, and the quality of the timber is the first, and the stream is as represented, and that it may be made, with very little expense, so as to run logs even without a freshet.

" (Signed) JAMES TODD."

And the said Moore was induced by the said Wescott and the said Todd to make a certificate or statement, in writing, in the words or to the effect following, that is to say:

"BINGHAM, *June* 26, 1835.

"I, the subscriber, do hereby certify that I have this day returned from an exploration of the Ford tract, and having been also frequently over the tract in hunting, I am fully satisfied that the estimation made by Jonas Brown, William Wescott, and myself, in May, 1833, will fall short of the quantity of timber, and that the one made this date by Mr. Thomas Chase is within bounds; the reason they fall short was that they did not explore, at that time, the part called the L., which we have done this time, and find more timber on it than was anticipated; and I also certify that I have been well acquainted with the stream called the Austin stream for these twenty years past, and consider it good and sufficient to run logs to the Maine Kennebec river, and the north and south branches of it on the tract sufficient to run them into the main Austin stream with a common freshet, after building one and repairing two dams on the said stream, even without a freshet.

" (Signed) LUTHER MOORE."

To which certificate and statement of the said Moore, the said Wescott subjoined and annexed a certificate and statement in the words or to the effect following, that is to say:

"I hereby certify that I agree to the above, and consider it perfectly true.

" (Signed) WILLIAM WESCOTT."

Which said certificates of said Chase, Todd, Moore, and Wescott were delivered to the said Haskins to be by him exhibited to your orator and said other persons, parties of the second part to said instrument, and to induce the said Haskins to report to your orator and said other persons that there was good pine timber upon said Ford tract sufficient to make at least sixty million feet of boards, and the said Haskins did afterwards, at said Boston, being deceived by the said representations and declarations of the said Wescott and Todd, and by the said certificates, and by having been conducted to and shewn the same body and glades of timber and trees several times, as being different and not the same, and by being shewn large bodies of good pine timber as being upon said Ford tract, which were not upon the same, and by the various other means as aforesaid was induced to report and represent, and did report and represent, to your orator, that the said Ford tract contained good pine timber sufficient to make seventy-two million feet of boards. And the said Haskins also exhibited to your orator the said last mentioned certificates of said Chase, Todd, Moore, and Wescott, and represented that the statements therein contained might be entirely confided in as true and correct. And your orator confiding in the said report and the representations of the said Haskins, and confidently believing that the same were correct and true, and confiding also in the said certificates of said Brown, Moore, and Wescott, Hill, Chase, Todd, Moore, and Wescott, and believing the statements therein contained to be true, and confiding in said representations and declarations made by the said Todd and the said Wescott, and believing the same to be true, was thereby induced to purchase of the said Todd the said three sixteenth parts of said tract as mentioned in said agreement, and also one thirty-second part more of the same tract, and did, on the twenty-ninth day of said June, purchase seven undivided thirty-second parts of said Ford tract, and paid therefor at the rate of five dollars the acre, which said payment was made to the said Todd, as follows: one-fourth part, being the sum of forty-three hundred and seventy-five dollars, was paid by your orator in cash, and the other three-fourths were paid by your orator by his three several promissory notes, each for the sum of forty-three hundred and seventy-five dollars, bearing date the said twenty-ninth day of June, and payable to the order of your orator in one, two, and three years, respectively, from the date thereof, with interest annually, which said notes were all endorsed in blank by your orator and delivered to the said Todd. And the said Todd thereupon delivered to your orator a deed, executed by one Mason Greenwood, conveying to your orator said seven thirty-second parts of said tract. And your orator thereupon executed and delivered to the said Todd a deed of mortgage, in which the said Greenwood was the grantee, and securing to the said Greenwood the payment of the said notes. And the said Todd received the said cash and the said notes, either wholly or in part, as

the agent and for the benefit of the said William, David, William C. Tristram, Erastus, Israel, Thomas, and William; and afterwards, the said Todd delivered the said cash and notes, or the greater part thereof, to the said William, David, William C., Tristram, Erastus, Israel, Thomas, and William, who received and appropriated the said cash and notes to their own use. And your orator further showeth, that the said Ford tract, so called, did not, on the said sixteenth day of June, nor at any time before nor since, contain, or have standing upon it, good pine timber sufficient to make sixty millions feet of boards, and that, in fact and in truth, the said Ford tract did not, on the said sixteenth day of June, nor at any time since, contain, or have standing thereon, more good pine timber than sufficient to make five million feet of boards, and that the said tract was not, on the said sixteenth day of June, nor has it been at any time since, worth more than at the rate of one dollar per acre, and that the owners thereof could not have sold any part of said tract, on said sixteenth day of June, or at any time since, for so much as said sum of four dollars and fifty cents the acre; and that the time within which the said Todd or his assigns had the election to purchase said ten sixteenths of said tract, or was authorized by the owners to sell the same, did not expire within one week after said sixteenth day, and that the said owners were not anxious that the said Todd or his assigns should not become purchasers under said alleged bond; and that the said Todd did not offer to sell the said land at the rate of five dollars the acre because the time was so short; and that the said several persons who signed said several certificates and written statements were not men of integrity, respectability, and disinterested, and were not well acquainted with timber and timber lands; but that the said Brown, Moore, Hill, Chase, and Moore were induced by some reward, paid or promised by the said William, David, William C., Tristram, Erastus, Israel, Thomas, and William, and the said Todd, or some of them, to sign said certificates, and that the said part of the said tract which was not seen by the said Haskins, nor explored by him, did not contain a large quantity of good pine timber, as represented and declared by the said Wescott to the said Haskins, but, on the contrary, was almost destitute of timber, and contained much less by the acre than that part of said tract which the said Haskins had seen and explored. And that the said tract had not been upon actual exploration estimated to contain timber sufficient to make one hundred and five million feet of boards, and the said Wescott had not been so informed by the said person whom he named, and the said Wescott did not believe that such an estimate was or would be correct. And that the timber which had, before said exploration by said Haskins, been cut upon said tract, had not been cut where the timber was inferior and scattering, but from the best part of the said tract, and the best timber that had ever been thereon. And such had been the occupation and course of life of your orator, that

at the time of making said agreement and purchase, he was wholly unacquainted with timber lands and new lands, and had never owned, or been in any manner interested, in any such lands, which was then and there well known to said William Wescott and said Todd. And the said Wescott and the said Todd, at the time of the making of said written agreement on said eighteenth day, and at the time of the making the said purchase by your orator, on said twenty-ninth day, well knew that your orator had never seen the said tract, and had no knowledge or information except what was communicated to him as aforesaid by the said Todd, Wescott, and Haskins, and that he relied entirely upon the representations, and declarations, and report, so made by them, and each of them, to your orator, and the said certificates exhibited by them as aforesaid.

And your orator avers, that the said Wescott and the said Todd, acting for themselves and also as agents of said David, William C., Tristram, Erastus, Israel, Thomas, and William Gooch, combined together, and also did combine with certain other persons now unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, to deceive your orator as to the quantity of timber upon said tract, and the value of the said land, by said representations and declarations, certificates, and other means as aforesaid, and to induce your orator to become the purchaser of said seven thirty-second parts, and to give therefor a much greater sum than it was worth; and your orator being advised that the said purchase so made by your orator, as aforesaid, ought not to remain or be binding upon your orator, but that the same should be rescinded, hath requested the said William Wescott, David, William C., Tristram, Erastus, Israel, Thomas, and William, and the said Todd, to rescind the same, and pay back to your orator the said sum which he paid in cash as aforesaid, and deliver up to your orator his said three promissory notes, and cause the said mortgage to be discharged, and to receive from your orator a reconveyance of said seven thirty-second parts. And your orator had well hoped that they would have complied with such reasonable requests, but they refuse so to do.

And the said William Wescott and the said Todd sometimes pretend that they did not, or either of them, give, offer, or promise to the said Moore or the said Chase any compensation or reward, or other inducement, to cause them, or either of them, to make either of the said certificates by them respectively signed, or in any manner to induce the said Haskins to report to your orator that there was a large quantity of good pine timber upon said tract, whereas your orator charges the contrary to be true, and that the said William and the said Todd, or one of them, did promise, or give, or offer to the said Moore and the said Chase, or one of them, some reward, or compensation, or inducement, to cause them to make said certificates or some of them, or for having made the same, and

did promise or give some compensation, or reward, or benefit, to induce them, or one of them, to endeavor to cause the said Haskins to believe, or to make report to your orator, that the said tract contained a large quantity of good pine timber; and sometimes the said William, David, William C., Tristram, Erastus, Israel, Thomas, and William, and the said Todd, pretend that the said several persons who signed said certificates were wholly disinterested in so doing, and that they had not, nor had either of them, any reward or benefit, or expectation of reward or benefit, for so doing, whereas your orator charges the co trary to be true, and that the said several persons who signed the said certificates, or some of them, were interested in the sale of the said seven thirty-second parts, or had some reward, or promise, or expectation, or benefit, from signing said several certificates—all which actings, doings, and pretences, and refusals, are contrary to equity and good conscience, and to the wrong and injury of your orator: in consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity—to the end, therefore, that the said Wescott and the said Todd, and their confederates, when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and each of them distinctly interrogated thereto; and more particularly, whether the said William, David, William C., Tristram, Erastus, Israel, Thomas, and William, did not own or claim to own ten sixteenth parts, or some part, of said tract of land, or had not some interest therein or in the sale thereof, or some part thereof, and how much they each and all owned or claim to own of said tract, and what interest each of them had therein or in the sale thereof, and how much each of them expected to receive of the consideration that should be paid by any purchaser or purchasers of said tract, and what benefit they and each of them expected to derive, or have derived, from any sale of the whole or a part of said tract; whether they and each of them did not in some manner authorize the said Todd to make sale of the said ten sixteenths, or of some part thereof, or to make some contract relative thereto, and what authority was given to said Todd, and what contract or agreement was made with him, and whether the same or any part thereof was in writing, where is such writing or writings, and that they may produce the same; whether they or some of them did not deliver to the said Todd the said certificates, or some of them, with intent that the same should be exhibited by the said Todd as correct and true, to such person or persons as should contemplate purchasing a part of said tract, and what certificates were delivered to said Todd, and by whose authority or assent, and for what purpose, and by whom and in what manner all and every of the certificates before

mentioned were obtained, and what compensation, reward, promise, or inducement was made or offered to said several persons who subscribed the said certificates, or to any of them, or to any other person, in order to obtain said certificates and each of them.

Whether the said William Wescott and said Todd were not employed, or caused by them and each of them to go with the said Haskins in making said exploration, and whether they or some of them did not give to the said William and the said Todd some compensation, reward, or gratuity, for going with said Haskins and making said exploration, and what and how much was paid, delivered, or promised to the said William and said Todd, and to each of them. Whether they, the said William, David, William C., Tristram, Erastus, Israel, Thomas, William, and James, and each of them, did really believe at the times that the said contract and purchase were made by your orator as aforesaid, that the said tract of land contained and had upon it good pine timber, sufficient to make sixty million feet of boards, and whether they and each of them had never heard, or had any reason to believe or suspect that the said tract contained less than that quantity of good pine timber; and whether they and each of them had never seen or heard statements or certificates that the said tract contained less than said quantity of sixty million feet, and how much less, and what quantity. Whether they and each of them did not receive some part of the said cash and notes which were given by your orator to said Todd, and what part, and in what manner said cash and notes were divided, appropriated, or disposed of, and whether the cash and notes delivered to the said Todd by your orator and said other persons who purchased said ten sixteenths, were not wholly or in part divided among them or some of them, or disposed of according to their direction or for their benefit, and how the same were disposed of and appropriated.

And upon a full and perfect discovery of the matters aforesaid, that the said cash paid by your orator as aforesaid may be repaid to him, with interest from said twenty-ninth day, and that the said promissory notes may be delivered up to your orator to be cancelled, or that the amount thereof may be paid to your orator, with interest from the said date thereof; and that the said mortgage may be released and discharged, and that your orator may be repaid the expenses and damages which he has paid and suffered by reason of the premises, and that your orator may have such further and other relief in the premises as the nature and circumstances of this case may require, and to your honors shall seem meet:

May it please your honors to grant to your complainant a writ of subpœna directed to the said William Wescott, David Wescott, William C. Mitchell, Tristram Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, William Gooch, and James Todd, commanding them personally to be and appear before your honors in the honorable court, at a day certain, and then and there full, true,

direct, and perfect answer make to all and singular the premises, and further to stand to and perform, and abide such further order, direction, and decree therein, as to your honors shall seem meet. And your complainant shall ever pray.

OTIS DANIELL,
By PELEG SPRAGUE, *his Solicitor.*

Whereupon the following writ of subpœna issued, viz:

Subpœna.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To William Wescott and David Wescott, of Portland, in the county of Cumberland and State of Maine, and both deputy marshals for the district of Maine, under Albert Smith, Esquire, marshal of the United States for said district of Maine, William C. [L. S.] Mitchell, Tristram Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, all of Portland aforesaid, and William Gooch, of North Yarmouth, in the said county and State, physician, and James Todd, of Portland aforesaid, and all citizens of the State of Maine—greeting:

For certain causes offered before the Circuit Court of the United States for the first circuit, as a Court of Chancery,

We command and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally appear before the said circuit court, at the office of the clerk of said court, in Portland, in said Maine district, on the first Monday of September next, at ten of the clock in the forenoon, to answer concerning those things which then and may be objected against you by Otis Daniell, of the city of Boston and State of Massachusetts, merchant, and a citizen of said State; and to do further and receive that which said court shall do and order in this behalf. And this you are in no wise to omit—and have you there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the United States of America, at Portland, this twentieth day of July, in the year of our Lord eighteen hundred and thirty-six, and the year of the Independence of the United States the sixty-first.

J. MUSSEY, *Clerk.*

Which subpœna is returned at the Rules, first Monday of September, A. D. eighteen hundred and thirty-six, with the following endorsements thereon, viz:

UNITED STATES OF AMERICA, *Maine district, ss:*

Be it known, that I, Ashur Ware, judge of the United States for the district of Maine, reposing special confidence in the integrity of John Rand, of Portland, Esquire, do hereby authorize and empower him to execute the above process, and make return thereof according to law.

[REC. LII, J. T. 1843.]—3

In testimony of which, I have hereunto set my hand and seal, at Portland, this twenty-second day of July, A. D. eighteen hundred and thirty-six.

ASHUR WARE, [L. S.]

Return of Subpœna.

UNITED STATES OF AMERICA, *Maine district, ss:*

Pursuant to the authority vested in me by the foregoing commission from the district judge for said district, I have served the within subpœna by giving attested copies thereof in hand, on the thirtieth day of July last, to the within-named Tristram Mitchell, James Todd, Erastus Hayes, Israel Waterhouse, and William C. Mitchell; and on the first day of August instant, attested copies of the same in hand to the within-named David Wescott and William Gooch; and on the second day of August instant, by giving an attested copy of the same in hand to the within-named William Wescott, and by leaving an attested copy of the within at the last and usual place of abode of the within-named Thomas Warren.

JOHN RAND.

Portland, August 4, 1836.

Defendant's appearance—Time enlarged.

And on said first Monday of September, upon the return of process aforesaid executed, the said defendants enter their appearance by William P. Preble, Esquire, their solicitor; and said cause is carried forward to the October term of said court then next—at which term, on the first day thereof, the same was thence continued.

And now the time having arrived, viz: the first Monday of December of the same year, for the said defendants to answer the plaintiff's bill, according to the rules of said court—

Upon motion of William P. Preble, Esquire, solicitor, it was alleged, that the defendants being obliged, by the nature of the case, to make their separate answers, each for himself; and the said William Wescott having, since the service of the subpœna, deceased, they cannot prepare and perfect their said answers in time: therefore it was prayed that said defendants may have time to the rule day in February next, to put in their answers to the plaintiff's bill—which is ordered accordingly.

At the Rules, first Monday of February, A. D. eighteen hundred and thirty-seven, the solicitor for the defendants put in and filed the separate answers of the said James Todd and of William B. Gooch, and moved for an enlargement of time, alleging that they were preparing, but cannot perfect and put in, the answers of the defendants, David Wescott, Erastus Hayes, William C. Mitchell, and Tristram G. Mitchell, Israel Waterhouse, and Thomas Warren, to the said bill; which motion was resisted on the part of C. S. Davies, Esquire, the plaintiff's solicitor. It was ordered that the

said answers be put in on or before the next rule day, and that no farther time be allowed for that purpose.

The answers put in of the said James Todd and William B. Gooch, are severally as follows, viz:

To the honorable the Circuit Court of the United States for the First Circuit.

Jas. Todd, defendant's answer.

The answer of James Todd, one of the defendants to the bill of complaint of Otis Daniell, complainant.

This defendant now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained for answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that sometime in the spring of the year A. D. 1835, there being much business doing in the buying and selling of wild and timber lands in the State of Maine, this defendant and William H. Codman, of Portland, Esquire, entered into a parol agreement with each other to join and procure a bond or obligation for the sale of some good tract of timber land for the purpose of again disposing of the same at a profit; that having made careful inquiries with a view to find a good and well timbered tract, that could be got hold of at reasonable rate, the said Codman informed this defendant that there was a tract of land called the Ford tract, which had the reputation of being favorably situated, and to be well timbered, and that he, said Codman, and this defendant, could obtain a bond of a part of the same, there being several persons interested in it, or in the sale of it; that accordingly said Codman applied to David Wescott and William Wescott for information respecting said tract, and was told by said Wescotts, or one of them, as this defendant was informed, and verily believes, that said tract was a good tract; that they, said Wescotts, believed there were from 50 to 60 or even 70 millions of pine timber on said tract, and that they had certificates from men of undoubted character, which went to establish the fact that there were from 50 to 60 millions on said tract; that said Wescotts had after consulting some others of the owners consented to give a bond to this defendant and said Codman, for the conveyance of about 6,000 acres, at $4.00 per acre, provided said Codman and this defendant would make immediate efforts to sell the same without loss of time. Whereupon this defendant and the said Codman took from the said Wescotts a bond, dated about the last of May, A. D. 1835, to run ten days. And this defendant and said Codman did offer said land mentioned in said bond or writing for sale to several persons in Boston, but being then unable to effect a sale, the time limited in said bond expired, and said bond was soon afterward cancelled and destroyed as useless, as this defendant fully believes.

And this defendant further says, that afterwards the said David and William Wescott, having stated to this defendant and said Codman, that they, said David and William Wescott, had the disposition and control of about ten thousand or twelve thousand acres in said Ford tract, this defendant and said Codman applied to them for and obtained and received from said Wescotts another bond, dated the ninth day of June, A. D. 1835, which said bond was as follows:

Know all men by these presents, that we, William Wescott and David Wescott, are holden and bound and acknowledge ourselves indebted to William H. Codman and James Todd, in the sum of ten thousand dollars, to the payment of which we bind ourselves, our heirs, executors, and administrators. Sealed with our seals, this ninth day of June, A. D. 1835.

The condition of the above obligation is such, that whereas the said William and David have this day agreed to convey to the said Todd and Codman, part of township number two in the second range, in the million acres in the county of Somerset, bounded as follows: beginning at the northeast corner of said township, thence west on the north line of said township, about four and one half miles, to the west line of a tract of land sold to Capt. J. Heald; then south on said east line, about two and a half miles, to the southeast corner of said tract; thence west on the south line of said town, about a mile and three quarters, to the west line of said township; thence east, three hundred and eighty-two rods, to the corner of lot number eleven and twelve, in the first range; thence north six hundred and sixty rods to the sixth range line of lots; thence east on said sixth range line, about three and a half miles, to the southwest corner of number three, seventh range; thence north two hundred rods, to a corner; thence east two hundred forty-seven rods, to a corner; thence north two hundred forty rods, to the tenth range line; thence east two hundred and twenty rods to the east line of said township; thence north, on said east line, about three miles, to the first mentioned bounds. The part which the said David and William hereby agree to convey being from ten to twelve thousand acres in common and undivided, in said tract above described, provided said Todd and Codman, or their assigns, shall pay or cause to be paid, to the said David and William, the sum of four dollars for each acre, in manner following, to wit: One quarter part cash, and the remainder in three equal annual payments, with interest annually, on good and sufficient security. Now, if the said Codman and Todd, or their assigns, shall, within thirty days, perform, or tender to perform, the above conditions, and said David and William shall thereupon cause to be executed and delivered a deed from Mason Greenwood, of the title which William derived from Massachusetts, then this deed shall be void, otherwise to remain in full force.

WILLIAM WESCOTT, [L. S.]
DAVID WESCOTT, [L. S.]

Witness, SOLOMON CROCKETT.

And this defendant further answering says, that, at the time of making and executing said last mentioned bond, it was agreed by and between this defendant and said Codman, on the one part, and said Wescotts on the other part, that this defendant and said Codman should immediately proceed to Boston and endeavor to effect a sale, and if this defendant and said Codman did not succeed in getting up a company in ten days who should agree to go on or send on to said tract, to explore the same, with a view to purchase it on condition that on such exploration said tract should prove satisfactory in respect to the quantity of timber thereon, and the nature of the streams running through the same, the said bond should in that case be surrendered up to be cancelled, and that this defendant and said Codman should not avail themselves of the whole thirty days named in said bond, excepting only in case they should succeed in getting up such a company within said ten days, for such purpose as aforesaid. And this defendant having failed to leave town for Boston for a few days after the execution of said bond, the said David Wescott and Tristram Mitchell, for and in behalf of themselves and others interested with them, did object to this defendant and said Codman having said bond any longer, and were desirous that this defendant and said Codman should not attempt any farther to make sale of said ten sixteenths, under said bond, but that the same should be given up to them.

And this defendant further says, that, at time, to wit, on the fifteenth of the same June, that the said David Wescott and Tristram Mitchell, did further object that said tract could then be bonded at the rate of five dollars the acre, and this defendant doth verily believe, and in fact know, that the said Wescott and Mitchell were very reluctant to allow to this defendant and said Codman any farther time ; and this defendant further says that it was at length arranged and agreed between the said Wescott and Mitchell, for themselves and others interested with them, on the one part, and the said Codman and this defendant on the other part, that this defendant and said Codman should hold said bond one week from that time, in order that this defendant and said Codman might have an opportunity to try to get up a company to go on to said tract to explore the same, with a view to the purchase thereof, if it should prove satisfactory on such exploration, and that said bond should be surrendered up to said Wescott and Mitchell, at the end of said week, if this defendant and said Codman did not, within that time, succeed in getting up such a company to make such exploration, with a view to the purchase of said tract; and that in case this defendant should succeed in getting up such a company, and in making a sale of said tract, the said David Wescott and Tristram Mitchell, and all the other owners of said tract, or interested therein, were to have, in addition to the four dollars per acre mentioned in said bond, one half of what the land should sell for over and above four dollars the acre ; all which agreements and arrangements were then,

on said fifteenth day of June, assented to by this defendant and said Codman on their part, and were considered and regarded by them as binding on their part, and to be carried into effect in the same manner and in the same good faith as though the same had been then reduced to writing and made part of said bond, and been signed by the parties interested therein.

And this defendant further says, that at the same time, to wit, on said fifteenth day of June, he was informed by said Codman, which information was confirmed to him by William Wescott and David Wescott, and subsequently by Tristram Mitchell, that he, said William Wescott, had sold out his interest in and under the aforesaid contract or bond, and in the ten sixteenths or lands therein mentioned, to said Tristram Mitchell and William C. Mitchell. And said William Wescott afterwards again so informed the defendant that he had no interest in and under said bond or contract and the lands therein covenanted to be conveyed, but that he had an interest in the Ford tract, viz. in another undivided portion of about three thousand acres, for which he and David Wescott held a bond for the conveyance thereof from the owner, Hiram H. Dow, said William's interest in said ten sixteenths of said Ford tract having been sold to said Tristram and William C. Mitchell. Which said statement the said William did repeatedly make in presence of this defendant and of Thomas W. Haskins, who conversed with said William Wescott, in the hearing of this defendant, on the subject.

And this defendant, further answering, says, that about the time when the said Wescotts made and executed the bond herein before set out, they did deliver to said Codman and to this defendant certain certificates and letters, in which the signers of said certificates and letters expressed their opinions in relation to the character of said Ford tract, as timber land, and to the quantity of timber thereon, or in relation to the streams which run through said tract; some of which certificates this defendant well recollects expressed the opinion of the signer or signers thereof in relation to the quantity of pine timber estimated by him or them to be on said Ford tract; all of which certificates and letters aforesaid are in the hands and possession, or under the control of the said Daniell, the complainant, as this defendant believes, and which this defendant prays the court here that the said complainant may be held to produce and file in this case; among which said letters this defendant well remembers one from Joseph E. Foxcroft, Esquire, one from William Cutter, and one from Oliver B. Dorrance, and a certificate from Charles M. Davis; all of whom this defendant well knew to be reputed and esteemed to be men of respectability and integrity.

Whether there were among said certificates the certificates dated May 13, 1833, and March 17, 1835, set forth in the complainant's bill, this defendant does not recollect, but presumes they may have been. He does, however, remember that the name of Jonas Brown was often mentioned in connexion with said Ford tract, by said

David and William Wescott as having explored it formerly in company with William Wescott and Luther Moore, and as being well acquainted with it, and that said Brown was said by them to be an experienced surveyor, and a man of fair reputation, and that he might be depended on. And this defendant, although he has no personal knowledge of said Brown, did not doubt, and has no reason now to doubt, that said Brown is such a man as he was then represented to be. This defendant does further well member that he did not at that time know Luther Moore or John Hill, and that there were certificates from men whom this defendant did not know, nor pretend to know, nor did this defendant at that time know or pretend to know, or represent himself as knowing personally any thing in relation to the quality of said land, or the quantity of timber thereon, or in relation to the nature of the streams running through the same.

And this defendant admits that he did afterwards place all said letters and certificates in the hands of said Thomas W. Haskins, to be by him shown and exhibited to whomsoever he might think proper. But this defendant wholly denies that he did then, or at any time afterwards, assert or represent to said Haskins, or in any way authorize said Haskins to assert or represent that the opinions expressed and estimates made in said letters and certificates were opinions and estimates free from error, or mistake in judgment on the part of the signers thereof; nor did this defendant then, or at any other time, assume or promise to guaranty to said Daniell, or to any other person whatever, nor did he authorize the said Haskins to guaranty to said Daniell, or to any other person, that the statements contained in said letters and certificates, or any of them, were absolutely accurate and free from error, nor that the signers of the same might not have erred in judgment in estimating the quantity of timber on said tract, or in their opinion, respecting the streams running through said tract, nor that they might not have been misinformed in relation to the quantity of timber and the nature of the streams aforesaid. On the contrary, this defendant does aver and declare that he at all times wholly declined to assume or take upon himself, either for himself or for those interested in said ten sixteenths covenanted to be conveyed in and by said bond, any responsibility whatever, as to the absolute correctness, in point of fact, of the statements, opinions, and estimates, contained in said certificates and letters, and did distinctly declare, at all times, that the purchasers of said lands, whoever they might be, must satisfy themselves both as regarded the lands, their situation, the quantity and quality of timber thereon, as well as the streams running through the same, and the facilities of getting timber therefrom. This defendant does, however, admit that he did say and represent that he himself did believe, as he in fact did verily believe, that the statements made in said letters and certificates were in conformity with fact, and might, in his opinion, be relied on, because some of the men who signed them, to wit,

Foxcroft, Cutter, Dorrance, and Davis, were, as this defendant well knew, men of known character and reputation; this defendant at the same time stating and declaring that on all points referred to in said certificates and letters, the purchasers of the ten sixteenths of said Ford tract, offered for sale by this defendant, must judge for themselves and ascertain the facts for themselves, to their own satisfaction. And this defendant further says, that he was the more particular in all these respects as well because he and said Codman had fully determined to take upon themselves no responsibility whatever respecting the truth of the representations, estimates and opinions, made or expressed in said letters and certificates, as because it was also understood by and between the said Wescotts and the said Mitchells, in their own behalf and in behalf of the others interested in said ten sixteenths of said Ford tract, on the one part, and this defendant and the said Codman on the other part, as well at the time of making and executing the bond herein before set out, as at the time of the subsequent agreement in relation thereto of the fifteenth of the same June, herein before mentioned, that although the owners or persons interested in said ten sixteenths fully believed on their part that there were from fifty millions even to seventy millions or upwards of pine timber on said Ford tract, and that the streams were as represented in said certificates, or some of them, yet they would not assume, in any way, any responsibility in regard to the correctness of such estimates, statements, and opinions, but that, on the contrary, whoever should purchase out their interest in said tract must take such measures, by exploration or otherwise, to satisfy themselves in regard to the quantity of timber on said tract, and in regard to the character of the streams running through it, as the purchasers themselves should, in guarding their own interests, deem most advisable and judicious.

And this defendant does aver that such was the understanding between himself and the persons interested in said ten sixteenths, in relation to the selling of the same under said bond, and that this defendant never was authorized to do any act or make any representation, and that he never did nor intended to do any act, nor make or intended to make any representation, or authorize or empower the said Haskins to give any assurance, or make any statement or representation other than in the strictest conformity to the understanding aforesaid, as hereinbefore, in this defendant's answer, fully set forth and explained. And this defendant further saith, that William Wescott, David Wescott, William C. Mitchell, Erastus Hays, Israel Waterhouse, Thomas Warren, and William Gooch, mentioned in the said Daniell's bill of complaint, never did give to this defendant any written instrument or bond authorizing him to dispose of said ten sixteenths as the said complainant has alleged; nor did this defendant ever so represent, nor did they ever authorize this defendant to take such measures and use such means as this defendant should see fit, nor did this defendant receive from the said

William and David Wescott, or from any other person whatever, any other bond or written instrument, authorizing him to sell and dispose of said ten sixteenths, other than the one herein before in his answer set out, dated the ninth day of June, saving only the bond herein first mentioned, and which was surrendered up and cancelled before or at the time when the said bond of the ninth of June was made and executed by said David and William, but this defendant has always understood, and fully believes, that the said William C. Mitchell and Tristram Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, and William Gooch, did fully assent, so far as they were respectively interested, that this defendant and said Codman should receive from the said Wescotts the said bond of the ninth of June, and that this defendant might also proceed under said bond, subject to the limitations, restrictions, understanding, and agreement herein before mentioned, to sell and dispose of the said ten sixteenths, they, the said parties interested in the same, receiving their several proportions of the purchase money at the rate of four dollars and fifty cents the acre; but this defendant denies that they, the said William Wescott, David Westcott, William C. Mitchell, Tristram Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, and William Gooch, or either of them, ever did authorize and empower this defendant to exhibit and represent the certificates and letters aforesaid as absolutely and certainly true and correct, but merely that they, the said Wescotts, Mitchells, Hayes, Waterhouse, Warren, and Gooch, supposed and believed them to be true and correct, and that most of them, as this defendant was informed, and verily believes, had themselves before that time taken or agreed to take an interest in said ten sixteenths on the strength of said certificates and letters, or a part of them, and in the belief that the representations contained in them were true and correct. And this defendant further says and avers, that he has no reason to doubt that all and every one of the persons aforesaid interested in said ten sixteenths did fully believe that the representations, statements, and estimates and opinions, made and expressed in said certificates and letters were true and correct.

And this defendant further saith, that immediately after this defendant and said Codman, on the one part, and said David Wescott and Tristram Mitchell for and in behalf of themselves, and of the other persons interested in said ten sixteenths, on the other part, had come to the arrangement and understanding herein before mentioned of said fifteenth day of June in respect to the said Codman and this defendant having one week further from that time, and no more, to try to effect a sale of said ten sixteenths, this defendant did proceed to Boston for the purpose of effecting such sale, and this defendant admits that he did there meet Thomas W. Haskins, named in said complainant's bill of complaint, and that the said Haskins did there offer to aid and assist this defendant in making such sale, on condition that this defendant would agree to

allow said Haskins the sum of two hundred dollars for his aid and assistance in finding persons to make said purchase, and in getting up a company who would consent to embark in the speculation. And this defendant did, accordingly, agree to allow the said Haskins the said sum of two hundred dollars for his aid and assistance in looking up purchasers, and in getting up such a company, provided the sale was ultimately effected. And this defendant further says, that it was well known to the said Daniell, that the said Haskins was aiding and assisting this defendant in hunting up purchasers, and in getting up a company for the purpose of making such purchase, and that the said Daniell must have known and did know at the time, as this defendant believes, that said Haskins was to receive compensation for his services in that respect from this defendant, in case such sale should be effected; and this defendant further admits, that he did place in the hands of said Haskins the letters and certificates herein before mentioned as he has already admitted, and for the purposes herein in this his answer before stated, and for no other purposes whatever, and under the limitations, restrictions, explanations, and instructions herein before set forth, and none other.

And this defendant wholly denies, as he has herein before denied, that he ever did authorize and empower said Haskins to make any other representations, or give any other assurances to any person whatever, other than what is herein in this his answer before fully stated and explained in relation to said letters and certificates, and to the statements made, and opinions expressed therein.

This defendant admits, that he did state to said Haskins that he believed there were, at least, sixty millions of pine timber on said tract, besides other timber, and that the streams running through the same were sufficient with an ordinary freshet to float said timber when cut into logs into Kennebec river; and the said Haskins was authorized and empowered to represent that, in the opinion of those interested in the said ten sixteenths there was that amount or a greater amount of timber on said tract, and that the streams in their opinion were of the character before mentioned—all which however was, *was* to be regarded by him, and by those to whom he might communicate the same, merely as a matter of opinion, estimate, judgment, and inference, of the correctness of which the purchasers must inform themselves, by enquiry, exploration, and examination, and be their own judges in relation thereto. And this defendant further admits that the said Haskins did interest himself in finding purchasers, and did aid and assist this defendant in getting up a company with a view to purchase said ten sixteenths, provided such company, on actual exploration by themselves or their agents, should be satisfied with the tract, and the quantity of timber thereon, and the streams running through the same--which said company consisted of the following persons, to wit: Otis Daniell, Josiah Daniell, Robert W. Molineux, E. F. Messinger,

Jonathan A. Richards, James H. Champney, Barnum Field, Daniel Sigourney, and John J. Soren; and the said company on the one part, and this defendant on the other, on the eighteenth day of June, A. D., 1835 entered into articles of agreement, under their hands and seals as set forth in the said complainant's bill of complaint. This defendant was, however, informed by said Thomas W. Haskins, and verily believes, that although his name does not appear as one of the company of purchasers in the writing aforesaid, so set out in the complainant's said bill, yet nevertheless he was interested with the said Daniell, the complainant, in the purchase to be made by said Daniell in his own name, if the purchase should in fact be made, as contemplated in the aforesaid articles of agreement, dated the eighteenth day of June, A. D., 1835, and that the said Haskins, as this defendant has been informed by said Haskins, and verily believes, has paid and contributed sums of money to said Daniell for and on account of his interest with said Daniell in the three undivided sixteenths parts, conveyed to said Daniel afterward in pursuance of the aforesaid articles of agreement.

And this defendant further says, that prior to leaving Portland on the said fifteenth day of June, the said William Wescott had represented to this defendant, that having it in contemplation to make a purchase with David Wescott of part of said Ford tract, he had more than two years before that time gone on to said tract with a view to examine and explore the same, in company with the aforesaid Jonas Brown, and that Luther Moore went with them as guide—that after examining and exploring said tract, and being on the same eight days for that purpose, the said Brown being well acquainted with exploring, estimated the quantity of timber on said tract at more than fifty millions—but that for the purpose of being sure of not overrating the quantity, the said Brown had finally fixed the estimate at fifty millions, having deducted from the amount of his rough estimate about one third—that he, said William, was so well satisfied with the character of said tract, from said examination and exploration, and of the quantity of timber thereon, that he and David Wescott were induced thereby to purchase a larger interest and share in it than they had at first contemplated; and the said William Wescott and David Wescott being both present, further stated to this defendant, that they believed there were from seventy to eighty millions of pine timber on said tract, but thought this defendant would be safe in estimating the supposed quantity to persons proposing to purchase, at sixty millions. And this defendant further says, that the said William Wescott was in his life time known and reputed as a man of fair character and reputation—that this defendant verily believes, and has no doubt that the said William Wescott and David Wescott had the fullest confidence in the correctness of their aforesaid statements, but that this defendant did not understand, nor has ever understood, that the said Wescotts, or either of them, did guaranty or intend to guaranty the correct-

ness of the estimated quantity of timber on said tract, but merely intended to express, and this defendant understood them as intending to express, their judgment and opinion only formed from all the information they had gathered on the subject. And this defendant admits that he did repeat to said Haskins the aforesaid statements made, and opinions expressed, by the said William Wescott and David Wescott, and did say to said Haskins, that in the opinion of this defendant, the said William Wescott and David Wescott were men of fair character and reputation, and as such, in the opinion of this defendant, might be depended on. And this defendant does deny that he ever did, in any way, undertake to promise or represent to the said Haskins or to the said Daniell, that the opinions and judgments so given and expressed by the said Wescotts, or either of them, were free from error or mistake, or that they were to be regarded and received by them, the said Haskins and Daniell, in any other way or manner, or to any other intent or purpose, than as the opinions and judgments of men of fair reputation and character, formed on the best information they had been able to obtain.

And this defendant further says, that at the same time when the said David and William Wescott made the statements and expressed the opinions last aforesaid, the said David Wescott did further advise this defendant not to state the estimated quantity of timber on said Ford tract, in offering the same for sale, at sixty millions, although he believed there were more than sixty millions on said tract, but to put the estimated quantity at fifty millions, and to let the persons who should purpose to purchase, explore the tract for themselves, and satisfy themselves in regard to the quantity; saying that they would then be much better satisfied to go on and complete the purchase, if, on such exploration, they should find the quantity, by estimation, to come up to seventy or eighty millions, rather than to fifty millions only; to all which, and to the said course of proceeding on the part of this defendant, the said William assented.

And this defendant further admits, that prior to entering into the articles of agreement of the eighteenth of June, as set forth in the complainant's bill, he did converse with the said complainant, and did repeat to the said complainant, substantially whatever he had said to said Haskins, touching the said Ford tract, and touching said certificates and letters as here in this his answer set forth and explained.

And this defendant further answering, says, that in consequence of a public sale of lands at Bangor, just before the fifteenth of June, A. D. 1835, timber lands had risen and were rising in the market, and that said David Wescott and said Tristram Mitchell did express to this defendant and to said Codman, an unwillingness that this defendant should proceed to make sale of said ten sixteenths under said bond, and did assert and maintain, that they could obtain a higher price therefor, and the agreement herein before mentioned, of the said fifteenth day of June, was finally acceded to, as an ami-

cable arrangement between the parties, to wit: the said Codman and this defendant, on the one part, and the said David Wescott and Tristram Mitchell, for themselves and those interested with them, on the other part, and this defendant admits that he did state to the said Haskins, and also to the said Daniell, the complainant, that this defendant had but one week in which to get up a company with a view to purchase said ten sixteenths, and that the time limited to him would expire within a week, and that the owners or persons interested in said ten sixteenths would not sell at so low a rate as four dollars and fifty cents the acre, if the time limited to this defendant should expire; they believing, and this defendant believing that, as timber lands were then going, and as the market was rising, they could get more; but this defendant does not remember, nor does he believe that he did, express an opinion that the said Ford tract was worth seven dollars and a half an acre, and he wholly denies that he ever represented or stated to said Haskins or to said Daniell, that the whole expense of cutting said timber, and getting the same to market, would not exceed the sum of three dollars per thousand, nor did this defendant profess to have any practical knowledge in such matters; and the said Haskins and the said complainant well knew that this defendant had no practical knowledge, or personal knowledge either, of the real value of said Ford tract, or of timber lands, or of the getting and manufacturing lumber; nor did this defendant make to the said Haskins, or to said complainant, any statements in regard to said Ford tract, the quantity of timber thereon, the nature of the streams running through the same, the facilities and expense of getting the timber to market, or the real or comparative value of said Ford tract, other than as a mere expression of the opinion and judgment of this defendant, formed from the statements and opinions made and expressed in said letters and certificates, and by said Wescotts and others, all of which, this defendant at the same time laid fully and without reserve or concealment, or suppression, or exaggeration, before the said Daniell, for him to form his own opinion, and draw his own inferences in relation thereto, and to judge and act for himself in the premises. Nor did this defendant make any other or further use, or intend to make any other use, of said letters or certificates, or to give any other effect to any of said estimates, opinions, and statements, than as means to induce the said Daniell and others, who might purpose or contemplate making a purchase of said ten sixteenths, to go or send persons, in whom they might have confidence, on to the land to examine and explore the said Ford tract, and the streams running through the same, and to ascertain for themselves, and in such way as they might judge best, and to their own satisfaction, the nature of the streams running through said tract, the quantity and quality of the timber standing and growing thereon, the facilities of getting the same to market, and such other facts as they might think it

necessary to collect, to enable them to determine whether they would or would not make the purchase of said ten sixteenths.

And this defendant further says, that such was the understanding on his part, and such he verily believes and has no doubt was the understanding of said Haskins and the complainant, and of all the parties to the articles of agreement, of the eighteenth of June, set forth in said complainant's bill of complaint.

And this defendant further says, that accordingly, at the time of making the contract set forth in said articles of agreement, and as part of the arrangement between the parties to said instrument, it was fully and expressly understood and agreed by and between this defendant on the one part, and the parties of the second part to said articles of agreement on the other part, that they, the said Otis Daniell and others, on the second part, should select such and so many persons as they might think proper, to act in their behalf, for the purpose of inquiring into all such matters and things, and ascertaining and proving them to their satisfaction, as they might deem of importance to ascertain, as well in relation to the opinions expressed and estimates made in said letters and certificates herein before mentioned, as to any other statements made or opinions expressed to said Haskins or to said Daniell by this defendant, and more particularly for the purpose of going on to, and examining and exploring the said Ford tract, and of judging for themselves, as well in relation to the quantity and quality of timber thereon, as of the nature of the streams running through the same, and of the facilities of getting timber therefrom, and transporting such timber, by means of said streams, to market. He, this defendant, on his part, agreeing and undertaking to pay the expense of any one person to be sent by the parties of the second part from Boston, as their agent for the purposes aforesaid—and further, also, the expense of one other person to be selected and employed by said parties of the second part, in making such exploration, on condition that said tract should not be estimated, on such exploration, by the persons so employed by said parties of the second part to explore the same, to contain as much as sixty millions of pine timber, and that the streams running through the same, should not appear to said persons, on such examination, to be such as, in and by said articles of agreement, they are supposed to be. And this defendant, on his part, further agreed to conduct, or cause to be conducted, on to said Ford tract, said agent and other persons, so to be selected and sent by said parties of the second part, in order that they might then proceed to explore and examine said tract, in behalf of said parties of the second part, in such manner as said agent and other persons, so to be sent, might see fit and proper.

And this defendant further says, that the said parties of the second part did there, at the same time, inform this defendant that they had selected as their agent, to act for them in the premises, the said Thomas W. Haskins—whereupon, this defendant, and the parties

of the second part, caused to be drawn up, and signed, and executed, said articles of agreement, set forth in said complainant's bill.

And this defendant further answering, says, that he has no reason to believe that the complainant, at the time of entering into said articles of agreement, had ever seen the aforesaid tract of land, or that he was personally acquainted with the persons who signed the said certificates, or that he knew of his own knowledge, what degree of faith and credit was to be given to them and to their statements, nor what degree of reliance could be placed upon their judgments in relation to timber lands and streams; but this defendant wholly denies that said Daniell ever did agree to take or purchase any interest in said ten sixteenths, on the representations, statements, opinions, estimates, or judgments, of the persons who signed said certificates, or of this defendant; but in al lpoints relating to the quantity of timber on said tract, the character of the streams passing through the same, and the facilities of getting said timber to market, the said Daniell and the other persons of the second part, were to take, and did agree to take, upon themselves the whole burthen and responsibility of ascertaining whether there were a quantity of timber thereon, sufficient to induce them to make such purchase; whether the streams running through the same, would answer the purpose of floating the timber into the Kennebec river; and whether, all things considered, the character of the tract, the quantity of timber, and nature of the streams, were such as, in their opinion, would make it for their interest to complete the purchase of said ten sixteenths of said Ford tract.

And this defendant further says, that immediately on entering into the said articles of ageement, he did accompany the said Haskins to Portland, for the purpose of conducting said Haskins on to said Ford tract, in pursuance of said agreement; and that on his arrival at Portland, on the nineteenth of the same June, he did give information to said David Wescott and Tristram Mitchell, that this defendant had entered into a provisional agreement for the sale of said ten sixteenths, and that himself and the said Haskins, as agent for the company who proposed purchasing, were then on their way to explore said tract; but this defendant does not recollect that said Haskins made any objection to this defendant's giving such information, and this defendant avers, that in giving such information, he was only fulfilling the agreement entered into between him and the said Codman, on the one part, and said Wescott, Mitchell, and others, on the other part, on the fifteenth of the same June, as hereinbefore mentioned, and did not suppose that any one had a right to object or could object thereto.

And this defendant further says, that, being himself ignorant of the situation of said Ford tract, and wholly unused to travelling in the woods and forests, he did apply to said William Wescott to accompany him on to said tract, so that, in conducting said Haskins on to said tract, this defendant might not mislead said Haskins or

go astray in his attempts to find said tract. And this defendant further says, that it was not until after much persuasion, and remonstrance, and assurance that he should be indemnified for his trouble and expense, that the said William Wescott consented to accompany this defendant.

And this defendant does deny and repel the suggestion and statement in the complainant's bill, that the said William Wescott and this defendant were requested or engaged and employed by any persons whatever to accompany the said Haskins in making said contemplated exploration, with the intent that said William Wescott and this defendant should endeavor to induce said Haskins, after such exploration, to make report to those whose agent said Haskins was, that the said tract contained as great a quantity of timber as was mentioned in said contract. And this defendant does assert and declare that his only motive for requesting said William Wescott to accompany him was because the said William Wescott had formerly explored said tract, and had been several times upon it, whereas this defendant was wholly unacquainted with that region of country.

And this defendant admits that he did inform the said Haskins that he had been informed by said William Wescott, David Wescott, and Tristram Mitchell, that said William Wescott had sold out his interest in said ten sixteenths under bond to this defendant and said Codman, as herein before mentioned. And this defendant admits that he heard the said William Wescott make the same statement to said Haskins, the said William Wescott at the same time stating, as herein before mentioned, that he was interested in another undivided portion of the same tract. And this defendant further admits, that he did state that the said William Wescott was a man of fair reputation, and, as this defendant believed, a man of integrity and honor. And this defendant to this day entertains the same opinion in regard to the character and reputation of said William Wescott.

And this defendant further says, that, true it is, the said William Wescott did suggest that it would be necessary, in making said proposed exploration, to have a pilot well acquainted with the woods, and did recommend to this defendant one Luther Moore, the said Wescott then stating that said Moore was well acquainted with travelling the woods, and particularly with said tract, and competent to guide them in making their proposed exploration. And this defendant, believing that it was necessary to have such a pilot and guide, did himself employ said Luther Moore for that purpose. But this defendant wholly denies that said William Wescott engaged or employed said Moore, either on his own account or on account of the said David Wescott, Tristram Mitchell, William C. Mitchell, Erastus Hayes, Thomas Warren, Israel Waterhouse, and William Gooch, or either of them. Nor had the said Luther Moore, as this defendant fully believes, any interest or bias whatever in re-

lation to making such exploration. Nor was the said Moore employed by this defendant for the purpose, or with any view that his judgment and opinion was to have, or would have, any influence on the judgment and opinion of the said Haskins or those who might accompany him. And this defendant has no recollection that said William Wescott represented that said Moore was an honest and upright man, or that he made any other representations respecting said Moore than what this defendant has in this his answer set forth and stated.

And this defendant further says, that the said Moore repeatedly did declare, in the presence of said Haskins and of this defendant, that he, the said Moore, knew nothing about timber—the fact being that the said Moore was not a getter of timber, but a mere hunter—a fact of which the said Haskins was at that time fully informed. And this defendant further says, that, with the aid of said William Wescott and said Moore, he did proceed and conduct the said Haskins, and those in company with him, on to said Ford tract; that the said Haskins, prior to going on to said tract, made inquiries of several persons, of whom he was directed to make inquiries by the said complainant and others, the parties of the second part, respecting the character of said Ford tract, the quantity of timber thereon, and the character of the streams passing through the same, which inquiries were repeated by said Haskins at Augusta, at Waterville, and at many other places; and the said Haskins uniformly represented to this defendant that the accounts he received from the persons of whom he was directed to make such inquiries, as well as from other persons, respecting said tract, were favorable to the character of said tract.

And the said Haskins also engaged Thomas Chase to accompany him on to said tract for the purpose of estimating the quantity of timber thereon, and otherwise satisfying the said Haskins in respect to the same, the said Chase being selected by the said Haskins as a suitable person for making such exploration, and as being well qualified to judge in relation to the quantity of timber and the nature of the streams; and this defendant verily believes that said Chase was fully competent to, and well qualified for, the purposes for which he was so selected and employed by said Haskins. And this defendant further says, that the said Haskins was also accompanied, in making such exploration, by Robert W. Molineux, another one of the parties of the second part, in the said articles of agreement. And this defendant further says, that, having conducted the said Haskins, Chase, and Molineux on to said Ford tract, he did there state to said Haskins his wish that said Haskins should make, and did recommend to the said Haskins to make, a full and thorough examination and exploration of the said tract, and to ascertain fully and to his entire satisfaction the character of the tract in respect to the timber thereon, and the streams running through it, so that he might be able to report the facts certainly as they were, and to the

satisfaction of his employers; and this defendant did there, on said tract, request said Haskins to take such courses, and give such directions, and do the business in such a manner as he, said Haskins, acting for his employers, should judge best for accomplishing the object of said exploration.

And this defendant further says, that neither the said William Wescott, as this defendant believes, nor the said Luther Moore, nor did this defendant, in any way attempt to control, direct, or in any way mislead, the said Haskins in making such exploration. Nor did this defendant, nor the said Wescott, nor the said Moore, so guide and conduct the said Haskins, Chase, and Molineux, or cause them to be so guided and conducted, in making said exploration, that they were shown and conducted through the same births or glades of pine timber several times, thus showing the same timber several times over as distinct and different births and different trees. Nor did this defendant, nor the said Wescott, or Moore, so guide and conduct the said Haskins, Chase, and Molineux, or cause them to be so guided and conducted, as to exhibit to them great quantities of good pine timber as standing and being on said tract, which, in fact, were not standing on said tract, but on other land adjacent thereto.

And this defendant further says, that, in all he did and said in and about the premises respecting the certificates, and letters, and the signers of the same, and in the statements made and communicated to said Haskins or said complainant, and in guiding and conducting the said Haskins on to said tract, and during the whole time of exploring the same, and in accompanying the said Haskins in making such exploration, this defendant did endeavor to act, and, as he fully believes, did act, in the most perfect good faith towards the said Haskins and his employers, and that he did not, in any way or manner, attempt or intend to mislead or deceive them, or either of them, in the premises. And this defendant further says, that he has no reason to believe, and that he does not believe, that the said William Wescott did wrongfully, knowingly, and with intent to deceive the said Haskins, Chase, and Molineux, and to cause them, and particularly the said Haskins, to make a false report, make any representations other than those which he, the said William, then fully believed to be in conformity with the truth. Nor did the said William do any act, as this defendant believes, nor resort to any trick nor subterfuge whatever, nor falsely represent to said Haskins, with the intent to deceive the said Haskins, and cause him to make a false report, any fact within the personal knowledge of the said William otherwise than and differently from what he really believed to be the truth.

And this defendant further says, that at no time, to his knowledge, did William Wescott pretend to said Haskins that he was not interested in said Ford tract, but, on the contrary, he distinctly and repeatedly stated to the said Haskins that he was interested in said tract; and the said Haskins did, in the presence and hearing of this

defendant, endeavor to induce the said William to give to the said Haskins the refusal of the bond in which the said William was interested with David Wescott as herein before stated. This defendant has no recollection of hearing the said Wescott say to said Haskins that he had no doubt there were sixty millions of pine timber on said tract, or any definite quantity, nor did he hear said Wescott make use of any expressions, or make any statements or declarations in the presence of said Haskins, such as the complainant, in his said bill, has supposed and imputed to said William Wescott, excepting as herein before set forth and stated; nor was he aware, nor did he suppose, nor does he believe that said Wescott did attempt to influence and induce said Haskins to make a false report to his employers of the quantity of timber on said tract, nor that he did in any way attempt to deceive, mislead, or corrupt, or that he did deceive, mislead, or corrupt, the said Haskins, Chase, and Molineux, and Moore, or either of them, or pay, or promise to pay, to either of them, any sum of money or other thing of value whatever. This defendant does, however, recollect that said William Wescott did say to said Haskins that there was a glade of pine timber on the northwest side of said Ford tract, and that he at the same time did state and declare that he, said Wescott, was not acquainted with the L part, so called, of said tract.

And this defendant further answering says, that having arrived on said Ford tract on the evening of the twenty-second day of June, and the said Haskins having spent two days with said Chase and said Molineux in examining and exploring said tract, and said Chase having estimated the quantity of timber on said tract at more than seventy millions, and the said Haskins and said Molineux being well satisfied with said estimation and with the said tract, and with the streams running through the same, and having examined and explored said tract, as they severally declared to this defendant, to their satisfaction, the said Haskins then, on the twenty-fourth day of the same June, on said Ford tract, did inform this defendant that he, as agent for and in behalf of said parties of the second part, in said articles of agreement of the eighteenth day of June, had concluded to complete said purchase, and to take said ten sixteenths, and did then accept said ten sixteenths and declare that he had accepted the same—he, the said Haskins, being thereunto so authorized in writing by said parties of the second part, as he so informed this defendant, and as this defendant verily believes; after which time the said Haskins and said Molineux spoke of said ten sixteenths as belonging to their said company, and the said Haskins took measures in relation thereto, and gave orders respecting the same, in the same manner as though the title in and to the same had been legally conveyed, according to said articles of agreement of the eighteenth day of June, to said parties of the second part.

And this defendant further says, that the said Haskins having so

informed this defendant that he was fully satisfied, and that he should explore said tract no farther, this defendant, on Thursday the twenty-fifth of said June, left said tract in company with said Haskins, Chase, Molineux, William Wescott, and Luther Moore, on their return.

And this defendant further says, that afterwards, on the twenty-sixth day of June, the said Haskins stated to this defendant that he wished to obtain from said Wescott and Moore, and from this defendant, certificates stating the result of said exploration, as he was authorized by said parties of the second part, in said articles of agreement, to offer the said ten sixteenths for sale in the market, in order to make a profit thereon, and that he wished for such certificates only for the purpose of exhibiting them to such persons as he, said Haskins, might offer said ten sixteenths to for sale.

And this defendant further answering says, that he did then object to said Haskins, and did decline signing any such certificate, stating to said Haskins that this defendant knew nothing more respecting said tract and the quantity of timber thereon, and the nature of the streams running through the same, than said Haskins and said Molineux themselves knew; and that this defendant's opinions in relation thereto were based merely upon the opinions of others; but the said Haskins insisted, and said to this defendant, who objected that the certificate prepared was also too general in its terms—"Never mind, we are in a hurry now; you know I understand all about it; I can explain the particulars; I shall need a certificate respecting the river, as I intend to sell the tract before I get home; all I want is your opinion or judgment."

And this defendant admits, that, yielding to the solicitations of said Haskins, he did, on the twenty-sixth day of said June, subjoin his assent to the correctness of a certificate given that day by said Thomas Chase; but whether said memorandum so signed by this defendant be truly set out in said complainant's bill of complaint, this defendant does not know, but he does well remember that the same was written and signed on their return at Bingham; and this defendant does further remember that the said Haskins also wrote certificates for said Luther Moore and said William Wescott, as this defendant believes, and said Haskins informed this defendant that he intended to obtain certificates from them, but whether said Haskins did in fact procure from said Wescott and said Moore the certificates set forth in said complainant's bill, dated the same twenty-sixth day of June, or whether he did obtain any certificates whatever from them, this defendant is not informed and doth not know, for he has no recollection of ever having seen any.

And this defendant further saith, that the said Haskins did at that time inform this defendant, when speaking of such certificates, and this defendant did verily believe, that the only object for which he, the said Haskins, wanted such certificates from this defendant, and from said Moore and said Wescott, was, that he might make

use of them in attempting thereafter to make sale of said ten sixteenths of said Ford tract, for and in behalf of said Otis Daniell and others, the parties of the second part in said articles of agreement of the eighteenth day of June, set forth in said complainant's bill of complaint.

And this defendant denies, that this defendant did in any way or manner induce said Thomas Chase to make the written certificates set forth in said complainant's bill, or that they did procure the same for the said Haskins; and this defendant further denies that he did, or that said Wescott did, in any way or manner, as this defendant believes, induce the said Luther Moore to make the statement and certificate dated 26 June, 1835, set forth in said complainant's bill. And this defendant further denies, that he, this defendant, did deliver, or cause to be delivered, or that the said William Wescott delivered, or caused to be delivered, to said Haskins, as this defendant believes, any of the several certificates set forth in said complainant's bill, and dated June 26, 1835, to be by said Haskins exhibited to said complainant and others, parties of the second part in said articles of agreement, and to induce said Haskins to report to said complainant and others, as the said complainant in his said bill of complaint has supposed.

And this defendant further answering says, that this defendant having been so informed and notified in behalf of the said parties of the second part in said articles of agreement, that they, the said parties of the second part, had concluded to take said ten sixteenths, and to make the purchase thereof; and this defendant being afterwards further informed that Jonathan A. Richards and Daniel A. Sigourney, two of the said parties of the second part, had in the mean time assigned their interest into and under said articles of agreement to John Watson, Thomas G. Wells, Asa B. Snow, and Skinner and True—a deed of warranty conveying an indefeasible title was made and executed by Mason Greenwood to the said Otis Daniell, Josiah Daniell, Robert W. Molineux, E. F. Messinger, James H. Champney, Barnum Field, John J. Soren, John Watson, Thomas G. Wells, Asa B. Snow, and Skinner and True, the said parties of the second part and their assigns, in pursuance of the bond of the ninth day of June, given by said David and William Wescott to this defendant and William H. Codman, as hereinbefore set out, and in fulfilment on the part of this defendant of the articles of agreement set forth in the complainant's bill of complaint; which said deed, so made and executed, was accepted by said parties of the second part and their assigns, as a full compliance on the part of this defendant with whatever this defendant, in and by said articles of agreement of the eighteenth of June aforesaid, had undertaken to do and perform.

And this defendant admits, that at the time of the delivery of the deed aforesaid from Mason Greenwood, the said Otis Daniell and the other grantees in said deed mentioned did pay to this defen-

dant their several proportions of the sum of twelve thousand and five hundred dollars, being the one-quarter part of the purchase money of said ten sixteenths; and did further give their several promissory notes for the remaining three-quarters part of the purchase money, payable in one, two, and three years, and secured by mortgages on the premises, as covenanted and agreed by the parties of the second part in said articles of agreement, which said promissory notes amounted to the sum of thirty-seven thousand and five hundred dollars; all which notes this defendant did afterwards pay and deliver over to David and William Wescott, Tristram and William C. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, and Oliver B. Dorrance for William B. Gooch, and the same, together with eleven thousand two hundred and fifty dollars in cash paid over to the said persons at the same time and on the same account by this defendant, were divided and distributed, as this defendant is informed and verily believes, in the manner following, that is to say: two tenths to the right of David and William Wescott, one tenth to the right of William C. Mitchell, two tenths to the right of Tristram Mitchell and William C. Mitchell, three tenths to the right of Erastus Hayes and Israel Waterhouse, one tenth to the right of Thomas Warren, and one tenth to the right of William B. Gooch.

And this defendant further answering says, that of the remaining twelve hundred and fifty dollars received from said Daniell and others, as already mentioned, this defendant paid two hundred thereof to said Thomas W. Haskins, for his services in aiding this defendant, before said eighteenth day of June, in finding purchasers; and this defendant reimbursed himself for ten dollars paid by him to Luther Moore as guide; fifty dollars to the sheriff of Somerset for ascertaining that there was no attachment; and after further deducting the expenses of this defendant and said Codman in their several journeys, the balance was equally divided between said Codman and this defendant.

And the said Codman and this defendant further received from said Wescotts, Mitchells, Warren, and Dorrance, their several promissory notes, and from said Hays and Waterhouse two of the notes aforesaid of Barnum Field; all of which amounted to the sum of three thousand seven hundred and fifty dollars, and which was in full of their share of the purchase money of said ten sixteenths of the Ford tract, being equal to what would remain of the whole purchase money after deducting an amount equivalent to four dollars and fifty cents the acre.

And this defendant further answering says, that he hath no knowledge in regard to the rights, title, claim, or interest of any of the defendants in the complainant's bill of complaint, in said ten sixteenths of said Ford tract, or in the sale thereof, other than what he has in this his answer already stated; and this defendant denies all knowledge of the manner in which any and every of the certificates

and letters mentioned in the said complainant's bill were procured or obtained other than what he has already stated in respect to the certificates given at Bingham, on the twenty-sixth day of June, A. D. 1835, as hereinbefore stated; but this defendant has no reason to believe, nor does he believe, that any reward, compensation, promise, or inducement, was made or offered to any of the persons who signed said letters and certificates to induce them to give the same; and this defendant wholly denies that he himself did give, make, or offer, or that the said William Wescott, according to the best knowledge and belief of this defendant, did make, offer or promise any compensation, reward, gratuity, or hold out any inducement whatever to said Jonas Brown, Luther Moore, John Hill, Thomas Chase, or any other person whatever, to induce them, or either of them, to make or sign any of the letters and certificates in said complainant's bill of complaint mentioned.

And this defendant denies that he was employed in any way or manner by any of the parties named in said complainant's bill of complaint, as being interested in said ten sixteenths, to go with the said Haskins in making said exploration, nor did this defendant receive from them, nor did he ever receive from them, any reward, compensation, or remuneration whatever.

And this defendant further saith, that said William Wescott being applied to by this defendant, for the reasons hereinbefore explained, the said William did refuse so to accompany this defendant unless he should be compensated for his time and trouble; whereupon, in order to induce the said William to conduct this defendant on to said Ford tract the said David Wescott and Tristram Mitchell did agree to allow and pay to said William five dollars a day as an indemnity and compensation to him if he would accompany this defendant, as this defendant desired; which sum said William afterwards received, as this defendant was informed, and verily believes, for his services in so accompanying this defendant.

And this defendant further answering says, that during the time of making said exploration this defendant and said William Wescott and Luther Moore did accompany said Haskins, Molineux, and Chase, to visit the Austin stream, so called; and the said Haskins did send the said Chase and Moore to visit and explore parts of the said Ford tract not explored by the said Haskins, and the said Chase and Moore reported to said Haskins the results of their explorations and examinations, they, the said Chase and Moore, not being accompanied by any other person whatever; and this defendant, in accompanying said Haskins, did see on said tract much pine timber, of a large size, and apparently of the first quality; and this defendant, so far as he could judge, did fully believe that the said tract had thereon the full quantity of pine timber which it had been represented to this defendant, and by this defendant to the said Haskins to be estimated to contain. And this defendant fully believes that each and every person who accompanied said Haskins in mak-

ing said exploration did believe that there were on said tract more than seventy millions of pine timber, and that the streams running through the same were such as the said Thomas Chase, the explorer, in his certificate, set forth in the complainant's bill of complaint, represented them to be. And this defendant denies all unlawful combination and confederacy, and all other matters and things in the complainant's bill of complaint alleged, not hereinbefore in this defendant's answer admitted or denied, without there is any other matter or cause or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and hereby prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

(Signed) JAMES TODD.

On this sixth day of February, A. D. 1837, personally appeared James Todd, above named, and made oath before me, that the foregoing answer, by him signed, is true, according to the best of his knowledge and belief.

JOHN L. MEGQUIER, *Justice of the Peace for the county of Cumberland and State of Maine.*

To the honorable the Circuit Court of the United States for the First Circuit.

Answer of W. B. Gooch.

The answer of William B. Gooch, one of the defendants, to the bill of Otis Daniell, complainant, the said William B. Gooch being named by said complainant, and subpœned by the name of William Gooch.

This defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be taken to the many errors, uncertainties, insufficiences, and other imperfections in the said complainant's said bill of complaint contained for answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that this defendant wholly denies that he, on the eighteenth day of June, in the year of our Lord eighteen hundred and thirty-five, was the owner of any part of the tract of land named in said complainant's bill of complaint, called the Ford tract, or that he had any title therein or claim to the same, or to any part thereof, on said eighteenth day of June, or at any other time, before or since, other than as is herein in this defendant's answer fully set forth and expressed.

And this defendant further answering saith, that some time in the latter part of the month of April, in the year eighteen hundred and thirty-five, Oliver B. Dorrance offered to sell to this defendant one thousand acres in common and undivided in said Ford tract, and then informed this defendant that said tract had the reputation of being a good and well timbered tract, with not less, as this defendant according to his best recollection believes, than fifty millions of pine timber thereon; that, after some conversation, this defendant agreed to take of said Dorrance one thousand acres in said tract, at three dollars and seventy-five cents the acre; that this defendant did then give to said Dorrance two promissory notes for the amount of the first payment of one quarter part, being nine hundred thirty-seven dollars and fifty cents; but this defendant received no security, writing, or obligation whatever from said Dorrance.

Afterwards, about the first of June following, this defendant learned from Tristram G. Mitchell, another of the defendants, that said Mitchell, and some others interested in said Ford tract, were about to sell their interest, or a portion thereof, in said tract; this defendant then stated to said Mitchell that if he, said Mitchell, should have an opportunity to sell his interest in said tract, this defendant wished said Mitchell to put in also the thousand acres which this defendant had agreed to take of said Dorrance.

And this defendant further answering says, that he never gave to said Mitchell, or to any other person whatever, any other or further authority or instructions in relation to the sale, or attempt to sell, said thousand acres, than as herein just stated and fully set forth.

And this defendant further answering says, that he wholly denies all knowledge of the acts and doings of James Todd in his efforts to make sale of any part of said Ford tract, and further denies that he had any knowledge whatever until long since the sale of said ten sixteenths was fully carried into effect, that there were any such certificates as those set out in the complainant's bill; nor has this defendant even now any knowledge of the existence of any such certificates other than that he has been informed that there are such, and believes there are such. But this defendant wholly denies that he ever gave any authority to said Todd to make any representations or statement to any person whatever respecting any certificates relating to said tract, nor did he authorize and empower said Mitchell, or any other person, to authorize said Todd to make any of the representations or statements attributed to said Todd by the complainant in his said bill of complaint. This defendant admits that he has often expressed his opinion that said Ford tract was a well timbered tract, and this defendant has no doubt that it is a well timbered tract. But this defendant wholly denies that he ever authorized any person whatever to represent or guaranty that said tract contained sixty millions of pine timber, or any definite quantity thereon, nor to give any guaranty or assurance that the

streams running through the same were suitable, with an ordinary freshet, to float said timber, when cut into logs and placed therein, into Kennebec river. And this defendant verily believes that David Wescott, William Wescott, William C. Mitchell, Tristram G. Mitchell, Israel Waterhouse, Thomas Warren, and Erastus Hayes, fully believed that said tract was a well timbered tract; that there were more than fifty, or even sixty, millions of pine timber thereon; and that the streams running through the same were sufficient, with an ordinary freshet, to float the same into the Kennebec river.

And this defendant further answering says, that he well knew William Wescott, and that he was a man of fair character and reputation, who could be depended on, and that he was esteemed to be a man of integrity and honor. That this defendant also knows Jonas Brown, and has known him for three years past; that said Brown has the reputation of being a judicious explorer, well acquainted with the business; that he sustains the reputation of a man of integrity and of fair character, who may be depended on: but this defendant has no knowledge of John Hill or of Luther Moore, named in said complainant's bill of complaint. And this defendant further answering says, that he has no knowledge whatever of the proceedings and doings of said Todd or of said William Wescott in making the exploration of said Ford tract, nor of the doings of Thomas W. Haskins, Thomas Chase, or Luther Moore. But this defendant was called upon afterward to contribute his portion of the compensation made to said William Wescott for his own personal services and expenses in conducting the agents and others of the purchasers on to said tract for the purpose of examining and exploring the same, and this defendant did accordingly pay to said William Wescott the sum of seven dollars and —— cents, being the proportion to be paid by this defendant on the thousand acres which this defendant had agreed to take of said Dorrance. And this defendant further saith, that the said William Wescott never pretended to him that he, said Wescott, or that said Todd, had ever paid, or promised or agreed to pay, any sum of money, gratuity, consideration, or reward whatever, to said Luther Moore, Jonas Brown, John Hill, and Thomas Chase, or to any person whatever, to induce them to sign certificates respecting the quantity of timber on said Ford tract, or in respect to the streams running through the same; nor does this defendant believe that said Wescott or Todd ever did, or that David Wescott, Tristram G. Mitchell, William C. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, or either of them, ever did pay, or promise to pay, or give any sum of money or other thing to induce any person to sign certificates or statements in relation to said Ford tract, or the streams running through the same.

And this defendant further answering saith, that he has not, nor did he receive, any of the money or notes given to said Todd, as set forth in said complainant's bill. But this defendant is informed,

and verily believes, that Oliver B. Dorrance did receive from said Todd the share or proportion of said money and notes arising from the sale of said thousand acres, at four dollars and fifty cents the acre, and appropriated them to his own use; and afterwards, the said Dorrance surrendered up to this defendant this defendant's two notes, amounting to the sum of nine hundred and thirty-seven dollars and fifty cents, and further gave to this defendant security for seven hundred dollars in full, for all this defendant's interest in said one thousand acres, to all which this defendant assented.

And this defendant further answering says, that not being present when the said Todd paid and delivered over the money and notes which he received from the complainant and others for the purchase-money of the land conveyed to said complainant and others, he, this defendant, does not know, and is not informed, what disposition was made thereof among the parties interested therein, but this defendant has always understood, and fully believes, that a division was made among the parties according to their respective proportions and interest in the tract sold and conveyed; that said Dorrance received the amount accruing for the thousand acres aforesaid, at four dollars and fifty cents the acre, and, after deducting therefrom what this defendant had agreed to give said Dorrance for said thousand acres, at three dollars and seventy-five cents the acre, the balance was accounted for to this defendant, as herein in this his answer before stated.

And this defendant further answering saith, that he did not even know James Todd in the business otherwise than by report, and never gave to said Todd any authority whatever in relation to the sale of said thousand acres; that all the authority he ever gave to any person whatever, was in speaking with Tristram Mitchell on the subject of selling his interest in said tract, this defendant expressed the wish that if the said Mitchell and others interested should have an opportunity to sell their interest in said Ford tract they would put in this defendant's interest therein also. But this defendant denies that he ever authorized said Mitchell or any person whatever, to make any statement or give any assurance from him that said Ford tract had sixty millions of feet of pine timber standing thereon suitable to be sawed into boards, or to guaranty that there was any definite and specific quantity thereon, or to give any assurance or guaranty that the streams were sufficient with an ordinary freshet to float said timber into the Kennebec river, and to a market, or to give any other assurance or representation, or make any other statement than that, in the opinion of this defendant, the said tract was a well timbered tract—that this defendant had agreed to take said thousand acres, and to give three dollars and seventy-five cents the acre therefor, in the full belief that said tract was a well timbered tract, having from fifty to sixty millions and upward of good pine timber thereon, and that the streams running through the same were sufficient with an ordinary freshet to float the same into the Kennebec river.

And this defendant further says, that he did fully believe, and that he has no doubt, that William Wescott, David Wescott, Tristram G. Mitchell, William C. Mitchell, Israel Waterhouse, Erastus Hayes, Thomas Warren, and James Todd, did each fully believe that said tract had not less than sixty million feet of pine timber standing thereon suitable to be sawed into boards, and that at the time of making sale of said ten sixteenths to said complainant and others, this defendant had never seen or heard statements or certificates that said Ford tract contained less than from fifty to sixty millions of pine timber, nor does he know or believe that said William Wescott, David Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, and James Todd, or either of them, had ever seen or heard statements or certificates at that time that said tract contained less than from fifty to sixty millions of pine timber thereon.

And this defendant further answering says, that he has no reason to believe, nor does he believe, that said William Wescott and James Todd did resort to any of the measures or means supposed in the complainant's bill of complaint, to mislead or deceive the said Haskins, Chase, and Molineux, or that said Todd and Wescott did in any way endeavor to induce said Haskins to make a favorable report in regard to the quantity of timber on said Ford tract, or in regard to the streams running through the same, or that said David Wescott, William Wescott, Tristram G. Mitchell, William C. Mitchell, Erastus Hayes, Thomas Warren, Israel Waterhouse, and James Todd, have in any way attempted fraudulently, falsely, willingly, or knowingly, to deceive or mislead said complainant in respect to said Ford tract, the value thereof, the quantity of timber thereon, or the nature of the streams running through the same, and the facilities of getting said timber to market.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the complainant's bill charged, without there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

WILLIAM B. GOOCH.

STATE OF MAINE, *Cumberland, ss:*

On the sixth day of February, A. D., 1837, personally appeared William B. Gooch aforesaid, and made solemn oath before me, that the foregoing answer, by him subscribed, is true, according to the best of his knowledge and belief.

JOHN L. MEGQUIER,
Justice of the Peace for said County.

At the rules, first Monday of March of the same year, the solicitor for the defendants put in and filed the answers of Thomas Warren, Erastus Hayes, Tristram G. Mitchell and William C. Mitchell, Israel Waterhouse and David Wescott, defendants, to the said bill, which were severally as follows, viz:

To the honorable the Circuit Court of the United States for the First Circuit.

Answer of T. Warren.

The answer of Thomas Warren, one of the defendants, to the bill of complaint of Otis Daniell, complainant.

This defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that sometime in the month of January, in the year A. D. 1834, this defendant purchased one thousand acres in the tract of land described in the complainant's bill of complaint, and called the Ford tract, and gave therefor in other lands in Portland, and in cash, to an amount estimated as cash, something rising three dollars the acre; and afterwards, at the request of David Wescott, who was also interested in said tract, this defendant consented that said David and William Wescott might give a bond to convey this defendant's interest in said tract, on certain conditions, to William H. Codman and James Todd, and the said David and William Wescott did, on or about the ninth day of June, A. D. 1835, give to said Codman and Todd a bond under their hands and seals to convey to said Codman and Todd ten sixteenths of said Ford tract on the conditions in said bond mentioned, the aforesaid one thousand acres being a part of said ten sixteenths. At the same time it was further understood and agreed, that unless said Todd and Codman should forthwith proceed and get up a company who should agree to purchase said ten sixteenths, provided such company should, on exploring the said tract, be satisfied therewith, said Todd and Codman should surrender up said bond, and the same should be cancelled. And said Todd and Codman having failed to proceed forthwith as agreed, and there being other persons who were very desirous of having a bond of said ten sixteenths, the said Wescotts and this defendant, and some others interested in said ten sixteenths, did object to said Todd and Codman's holding said bond, and did request said Todd and Codman to surrender up the same, but said Todd and Codman being very desirous of holding said bond a short time longer, in the expectation, and with the intent to make sale of said ten sixteenths at a higher rate than they were to pay for the same,

according to said bond, it was finally agreed by said David Wescott and Tristram G. Mitchell, with the assent of this defendant, that said Codman and Todd might hold said bond one week longer, they, said Todd and Codman, to allow to those interested in, or the owners of said ten sixteenths, in addition to four dollars the acre, which said Todd and Codman were to pay for said land according to said bond, the one half of what Todd and Codman might sell said ten sixteenths for over and above four dollars the acre; and further, if said Todd and Codman did not succeed in making a provisional sale of said tract as herein before stated, within the week, the said bond should without further delay be surrendered up and cancelled, all which was fully agreed and assented to by said Todd and Codman.

And this defendant says, that he never did give, nor assent to the giving, to said Todd and Codman, or either of them, in writing or otherwise, any other or further power, authority, instruction, or permission, in relation to the sale, or in relation to any measures to be taken by said Todd and Codman to effect a sale, of said ten sixteenths, or any part thereof, than this defendant in this his answer has above set forth and stated. This defendant did not himself directly, nor did he indirectly, through said Wescotts, or any other person, authorize said Todd to take such measures and use such means to effect a sale of said ten sixteenths, or any part thereof, as said Todd should see fit; nor did this defendant deliver to said Todd, or authorize any other person to deliver to said Todd, any of the certificates set forth or mentioned in said complainant's bill of complaint, nor had this defendant any knowledge that any such were in fact delivered to said Todd and Codman, or either of them.

And this defendant does aver and declare, that the whole extent of the power and authority given by this defendant to said David and William Wescott, and to said Todd and Codman, or either of them, was this and no more, namely, that this defendant did agree to convey, or cause to be conveyed, to said Todd and Codman, or to their assigns, agreeably to their order, this defendant's one thousand acres in said Ford tract, on condition that within the time agreed upon, and according to the terms mentioned in said bond, said Todd and Codman, or their assigns, should pay and secure to be paid to this defendant, for said thousand acres, for and at the rate of four dollars the acre, together with one-half of what said Todd and Codman should, on a resale thereof, obtain per acre over and above the said price of four dollars the acre. But this defendant never did authorize and empower said Todd, to represent that said Ford tract contained any particular quantity of pine timber thereon, or to make any representations or statement whatever, in behalf or on the responsibility of this defendant, in relation to the quantity of timber on said tract, or the nature of the streams penetrating into the same, or the facilities of getting the timber thereon to market.

And this defendant further answering says, that he knows nothing respecting any representations and statements made by said Todd to Thomas W. Haskins or to said complainant, nor does this defendant know any thing about any statements, representations, or doings, of said Haskins, either in aiding said Todd to find purchasers, or in his actings and doings as the agent of said purchasers, excepting that he was informed that said Todd had made a provisional agreement for the sale of said ten sixteenths, and that said Haskins, as the agent of those proposing to make the purchase, had gone to explore said tract.

And this defendant further says, that he never employed said Todd or said William Wescott to accompany said Haskins on to said tract, nor does this defendant believe that said Todd was employed in any way whatever, by the persons interested in said ten sixteenths, to accompany said Haskins in exploring said Ford tract; but this defendant was informed that said Todd having engaged to conduct said Haskins on to said tract, to the end and for the purpose of enabling said Haskins, and those whom he might employ for that purpose, to explore said tract, and that said Todd not knowing said tract, nor where to find the same, did apply to said William Wescott to go with him and point out to said Todd and Haskins said tract; and this defendant was informed that said William Wescott, at the solicitation of said Todd, was sent by David Wescott and Tristram G. Mitchell, for and in behalf of the owners of said ten sixteenths, to point out to said Todd and Haskins said tract, and conduct them on to the same, and for no other purpose or object, and with no other authority whatever, and to no other intent. And this defendant wholly disavows all knowledge of, or participation in, any such devices, practices, and fraudulent doings, and proceedings, on the part of said Todd and said William Wescott, as the complainant, in his said bill of complaint, has supposed set forth and charged. This defendant knows nothing of the sayings, doings, statements, and representations, of said Todd or said Wescott; but this defendant does not believe that said Todd or said Wescott did resort to any undue measures, offers, or promises, or pay any sum or sums of money, or use or attempt to make use of any influence or inducement, to cause Thomas Chase, or Luther Moore, or Jonas Brown, or John Hill, to sign any certificates whatever, in relation to said Ford tract or the timber thereon, or to influence, or cause them to influence, the said Haskins, either in the manner or extent of his exploration of said tract, or in the report which he might make of the result of such exploration.

And this defendant further says, that he has never paid, nor promised to pay, nor contributed in any way, nor made nor promised any compensation whatever, to any person whatever, to sign any of the certificates mentioned in said complainant's bill of complaint; nor does this defendant believe that David Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse,

or William B. Gooch, ever paid or contributed any sum of money, or made or promised to make any compensation, or offered or held out any inducement to any person whatever, to cause them or any of them to sign any of said statements and certificates.

And this defendant further answering says, that about the last of June, A. D. 1835, James Todd paid, and secured to be paid, to this defendant, in cash and indorsed notes, four thousand five hundred dollars, and claimed of this defendant a deed conveying a legal title to said thousand acres, according to the tenor of the bond of said Wescotts, and, thereupon, a legal title in said thousand acres was conveyed through Mason Greenwood to the assigns of said Todd, according to his order and direction, and in compliance with, and fulfilment of, the condition of said Wescotts' bond, so far as this defendant was interested therein, or had authorized or assented to the same, as this defendant understood and was informed in relation to the same, this defendant not having any copy of said bond, nor ever having seen the same.

And this defendant further says, that neither of the notes so paid to this defendant by said Todd, were the notes of Otis Daniell, the complainant.

And this defendant further answering says, that he well knew William Wescott in his lifetime, and that he was reputed to be, and this defendant believes that he was, a man of integrity and respectability, whose statements and representations might be relied on, as truly expressing his opinions, so far as they professed to express them. And this defendant did understand, that said Wescott, in company with an experienced explorer, had himself, prior to this defendant's purchasing into said tract, explored the same; and this defendant, at the time he made said purchase, did understand that said explorer had estimated the quantity of good pine timber on said tract at from fifty to sixty millions; and, until after the sale made by said Todd hereinbefore mentioned, this defendant never heard the said Ford tract represented as containing less than from fifty to sixty millions of good pine timber, standing and growing thereon. And judging from all this defendant had been able to learn respecting said tract, he had no doubt, nor does he believe that said David Wescott, William Wescott, William C. Mitchell, Tristram G. Mitchell, Israel Waterhouse, William B. Gooch, or James Todd, or Erastus Hayes, or either of them, had any doubt, that there were standing and growing on said tract, on the twenty-ninth day of June, A. D. 1835, sufficient good pine timber to make sixty million feet of boards, beside other timber.

And this defendant further answering says, that he did understand that said William Wescott, having objected to accompany said Todd, to point out to him and said Haskins said Ford tract, David Wescott and Tristram G. Mitchell did engage and induce the said William to go and lead said Todd and Haskins on to said tract, and as this defendant is informed and believes, did promise to pay

said William five dollars per day for his services, together with his travelling expenses, and this defendant has been informed and believes, that said William was accordingly paid at the rate aforesaid; but said defendant never was informed, nor does he believe, that said William ever was paid, or was to be paid, for any other services, disbursements, expenditures, or expenses, whatever, other than for merely conducting said Todd and Haskins on to said Ford tract, to the end and for the sole purpose that said Haskins, and those who accompanied him, might proceed to explore said tract in such manner, and to such extent, as said Haskins might deem for the interest of his employers. Whether this defendant contributed his proportion of the sum paid to said William Wescott, this defendant does not now recollect, nor has he any receipt or memorandum by which he can ascertain the fact, nor does this defendant know any thing, of his own knowledge, in regard to said William Wescott being sent by said David Wescott and Tristram G. Mitchell.

And this defendant denies all and all manner of, unlawful combination and confederacy wherewith he is by the said bill charged, without there is by the said bill charged, or in the same contained, any other matter, cause, or thing, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and he hereby prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

THOS. WARREN.

STATE OF MAINE, CUMBERLAND, *ss:* *February* 22, 1837.

Then personally appeared Thomas Warren, and made solemn oath that the facts stated in the foregoing answer by him subscribed are true, according to the best of his knowledge and belief.

Before me, JOHN L. MEGQUIER,
Justice of the Peace for said county.

To the honorable the Circuit Court of the United States for the First Circuit.

Answer of E. Hays.

The answer of Erastus Hayes, one of the defendants, to the bill of complaint of Otis Daniell, complainant.

This defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or

unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that this defendant, prior to the first of May, A. D. 1835, had made two several bargains for portions of the tract of land described in the complainant's bill of complaint, called the Ford tract, for which this defendant paid, and agreed to pay for, and at the rate of three dollars and fifty cents the acre; this defendant having first, by careful inquiry of Jonas Brown and others, satisfied himself that said tract was a valuable tract of timber land. And this defendant further says, that afterwards, in some conversation with David Wescott, this defendant did give his consent that David and William Wescott, in disposing of their own interest in said tract, might also dispose of the remaining interest of this defendant, being one thousand seven hundred and fifty acres, and also of the interest of Israel Waterhouse, another of the defendants, there being, as this defendant considered, a friendly understanding between this defendant and said Waterhouse, that the interest of this defendant and said Waterhouse, when sold, should be sold together.

And this defendant further answering says, that he has been informed, and believes, that said David and William Wescott did give to James Todd and William H. Codman a bond, in which they bound themselves to convey to said Todd and Codman ten sixteenths of said Ford tract, on the conditions in said bond mentioned, which said ten sixteenths did include the interest of this defendant in said tract; and this defendant did understand that, by the terms of the agreement and arrangement in said bond, and in relation thereto, this defendant and the other owners of said ten sixteenths were to receive from said Todd and Codman four dollars per acre, together with one half of what said Todd and Codman should receive over and above four dollars the acre on a resale of said ten sixteenths. This defendant does not know the precise tenor of said bond, never having seen the same; but this defendant was informed, and believes, that said bond was the only writing or instrument which the said Todd and Codman, or either of them, had, giving to them any power or authority to sell or dispose of said ten sixteenths, or any part thereof. This defendant denies that he ever authorized and empowered said Todd to take such measures and use such means to effect a sale of said ten sixteenths, or any part thereof, as he, said Todd, should see fit; nor did this defendant authorize said David and William Wescott to give to said Todd, or to any other person, any such power and authority. This defendant never gave to said Todd and Codman, or either of them, any power, authority, instruction, or directions whatever; nor did this defendant ever give to said Wescotts, or either of them, any other or further power or authority than that the said Wescotts, in making sale of their own interest in said Ford tract, might also sell the interest of this defendant and of said Israel Waterhouse.

This defendant did see in the hands of William Wescott, some time in February, 1835, a certificate of the purport and to the effect of the one set out in the complainant's bill of complaint, signed by Jonas Brown, Luther Moore, and William Wescott, which said certificate did, among other things, induce this defendant to agree to purchase an interest in said tract, but this defendant knows nothing of the delivery of said certificate to said Todd, nor that it ever was delivered to him; nor does this defendant know of, nor did he ever hear any thing about, any other certificates than the certificate aforesaid, dated May 13, 1833. And this defendant says, that he never did authorize said Todd to exhibit any certificates or make any representations or statements in regard to the quantity of timber on said Ford tract, or in regard to the character of the streams penetrating into the same, or in regard to the facilities of getting the timber on said tract to market; nor did he ever authorize said Wescotts to so authorize said Todd. This defendant knows nothing about the statements or representations of said Todd to Thomas W. Haskins or to the complainant, nor of the statements, representations and doings of said Haskins, nor whether the said Todd or said Haskins ever made any such statements or representations, nor does this defendant know any thing about any representations or statements of William Wescott to said Todd or to said Haskins, nor whether any such statements and representations were made by said William Wescott. And this defendant, in no way admitting that any such representations and statements were made by said Todd or William Wescott, in relation to said Ford tract and the quantity of timber thereon, as the said complainant in his said bill has set forth and charged, nevertheless says, that if any such were in fact made, they were made on the sole responsibility and on the proper motion of the said Todd and Wescott, without the knowledge, authority, sanction or approval of this defendant, directly or indirectly, and, as this defendant verily believes, without the knowledge, authority, sanction, or approval, directly or indirectly, of the said David Wescott, William C. Mitchell, Tristram G. Mitchell, Israel Waterhouse, Thomas Warren, or William B. Gooch, or either of them.

And this defendant further says, that he never paid, or promised to pay, any person for signing, or procuring to be signed, or to be made, any of the certificates mentioned in the complainant's bill; nor does this defendant believe that either of the persons who signed any of the statements and certificates set forth or mentioned in said bill were ever paid or promised any consideration whatever if they would sign, or for having signed, any of said statements or certificates.

And this defendant knows nothing of the doings, statements, and proceedings of James Todd, William Wescott, Thomas W. Haskins, Luther Moore, or Thomas Chase, in making an exploration and examination of said Ford tract; but this defendant does not believe

that said William Wescott or said Todd had recourse to any of the devices, pretences, or fraudulent practices in and about the exploration of said tract, that said complainant in his bill has supposed and charged, or that said Todd or said Wescott or Luther Moore did intend to deceive, mislead, or misinform said Haskins or Thomas Chase, or that they did deceive, mislead, or misinform them, or that they, the said Todd, Wescott, or Moore, or either of them, did influence or attempt to influence the said Haskins or the said Chase, in estimating or reporting the quantity of timber on said tract.

And this defendant further answering says, that he well knew said William Wescott in his lifetime; that he was reputed to be, and this defendant believes was, a man of integrity and respectability; that said William, at the earnest solicitation and request of said Todd, and of David Wescott, and of William C. Mitchell, and Tristram G. Mitchell, or one of them, did consent to go, and did go and conduct said Todd and Haskins on to said Ford tract, to the end that said Haskins might there explore the same, and cause the same to be explored; that said William Wescott was requested to go, because he had formerly been on to said Ford tract, and could conduct said Todd and Haskins on to said tract without the danger of any mistake, whereas said Todd was wholly unacquainted with said tract and the location of the same; and that said Wescott was employed for the reasons aforesaid, and for the sole purpose aforesaid, and no other purpose whatever—for which service the said William was to be paid, and was paid, five dollars per day and his travelling expenses, of which this defendant paid his proportion, according to his interest in said ten sixteenths; but said Todd, as this defendant always understood, went with said Haskins in compliance with his own arrangements and at his own expense.

And this defendant further answering says, that about the last of June or first of July, A. D. 1835, the said Todd having notified the said David and William Wescott that he was ready to complete the sale of the ten sixteenths in said bond of said Wescotts covenanted to be conveyed to said Todd and Codman, or their assigns; and this defendant being informed thereof, the said Todd did pay to this defendant, in cash and promissory notes, the sum of seven thousand eight hundred and seventy-five dollars, in full of the consideration of said one thousand seven hundred and fifty acres, the interest of this defendant in said Ford tract; and thereupon, the legal title in the same was in due form of law conveyed, agreeably to the order and direction of said Todd, but to whom this defendant never inquired, and does not know—the legal title being in Mason Greenwood, who, by the assent of this defendant, conveyed the same to the person or persons to whom said Todd directed the same to be done.

And this defendant further says, that the promissory notes so paid to this defendant were not, according to the best of this defendant's recollection, the promissory notes of the complainant, mentioned in his said bill of complaint.

And this defendant further answering says, that at the time he purchased into said Ford tract, he did believe, from the general reputation of said tract as a timber tract, and from all he could learn on inquiry, that said tract had then standing and growing thereon from fifty to eighty millions of good pine timber, and so continued on the said twenty-ninth day of June, A. D. 1835; and this defendant never heard the said quantity, prior to that time and until long after, estimated at a less amount than from fifty to eighty millions. And this defendant fully believes that said David Wescott, William Wescott, William C. Mitchell, Tristram G. Mitchell, Israel Waterhouse, Thomas Warren, William B. Gooch, and James Todd, did each believe, at the time stated by the complainant, that there were sixty millions of good pine timber then standing and growing on said tract.

And this defendant further answering says, that he knows nothing further respecting said certificates, the manner of obtaining them, for what purpose they were obtained, by whom they were delivered to Todd, nor for what purpose, further than he has in this his answer already set forth and stated; but this defendant has no knowledge or belief that any compensation, reward, promise, or inducement, was made or offered to any of the persons who subscribed said certificates, or any of them, in order to obtain said certificates, or either of them.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without there is in and by the said bill charged, or in the same contained, any other matter, cause, or thing, material or necessary to this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and he hereby prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

ERASTUS HAYES.

STATE OF MAINE, *County of Cumberland, ss:*

February 23*d*, 1837.

Then personally appeared Erastus Hayes, and made solemn oath that the foregoing answer by him subscribed is true, according to the best of his knowledge and belief.

Before me, JOHN L. MEGQUIER,
Justice of the Peace.

To the honorable the Circuit Court of the United States for the First Circuit.

Answer of T. G. and W. C. Mitchell.

The answer of Tristram G. Mitchell and William C. Mitchell, two of the defendants, to the bill of complaint of Otis Daniell, complainant.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's bill of complaint contained, for answer thereunto, or unto so much thereof as these defendants are advised is material or necessary for them to make answer unto, answer and say that, on the fourth day of March, A. D. 1835, these defendants, with Hiram H. Dow, agreed to purchase of Oliver B. Dorrance seven thousand acres, or thereabouts, of land in the Ford tract, known as the Upper Austin Stream tract, whereof four thousand acres were to be the share of or proportion of these defendants, and the said Dorrance did then sign a memorandum in writing, as follows, viz: "Portland, March 4, 1835. This may certify that I agree to convey to William C. Mitchell, T. G. Mitchell, and Hiram H. Dow, all my interest, being about seven thousand acres, in the Ford tract, and known as the Upper Austin Stream tract, at two dollars fifty cents the acre, reserving the timber cut this and the past season, and to receive my pay as follows: one-fourth cash and the balance in one, two, and three annual instalments, with interest annually; a deed to be given on demand. O. B. Dorrance."

And these defendants, about the same time, paid and secured to be paid to said Dorrance two thousand five hundred dollars, being the cash payment of one-quarter part of the consideration of said four thousand acres, the share or proportion of these defendants. And the said William C. Mitchell, for himself, says, that on or about the 27th day of April, in the same year, he did purchase of William D. Little one other thousand acres in said Ford tract, and paid to said William D. Little, as a consideration therefor, four thousand dollars, being at the rate of four dollars the acre therefor; and afterwards, about the last of May of the same year, William B. Gooch, another of the defendants, having, as these defendants were informed, also agreed, before that time, to purchase of said Dorrance one thousand acres in the same tract, the said Gooch did say to these defendants, or one of them, that, "*if we had a chance to sell our interest in said Ford tract, he wished us to put his in also,*" which said direction was all the authority or instruction which these defendants, or either of them, had from said Gooch in regard to the sale of his said interest in said tract.

And these defendants further answering say, that David Wescott and William Wescott, or one of them, did apply to these de-

fendants and obtain their consent that they, said Wescotts, should give to James Todd and William H. Codman a bond for the conveyance of a portion of the interest of these defendants in said tract on the conditions in said bond mentioned, but the said Codman and Todd having failed to make sale of said interest, the same was surrendered and cancelled, as these defendants are informed and verily believe.

And these defendants further answering say, that about the same time, to wit, on the ninth day of June, A. D. 1835, the said Wescotts gave to said Todd and Codman another bond, (a copy of which is annexed to this answer,) with the consent of these defendants, but on this condition, that said Todd and Codman should forthwith proceed to sell the portion of said tract covenanted to be conveyed in and by said bond, and should conclude a provisional agreement for such sale within ten days, otherwise the bond should be surrendered up; and the said Todd and Codman having failed to proceed forthwith to sell said portion of said tract, these defendants and the said Wescotts did insist that said Todd and Codman should give up said bond, and not attempt to make sale of said tract or any part thereof under the same. And these defendants and said Wescotts were unwilling to allow said Todd and Codman any longer or further time to make sale of said portion of said tract under said bond, but finally, as a compromise and amicable arrangement, it was agreed by and between said Todd and Codman on the one part, and these defendants and David Wescott on the other, that the said Todd and Codman should hold said bond one week longer, but that, if in that time said Todd and Codman did not succeed in finding a company to go on and explore said tract with a view to the purchase of the said portion, said bond should then be given up by them; and in case they should get up a company to make such exploration, with a view to purchase said portion of said tract, on condition that said tract should prove satisfactory on such exploration by said company, then the parties interested in said ten sixteenths should be entitled to receive, besides four dollars the acre, (the price mentioned in said bond,) one half what the land might be sold for by said Todd and Codman over and above four dollars the acre, all which was assented to as well by these defendants and David Wescott on the one part, as by said Todd and Codman on the other.

And these defendants further answering say, that they never gave to said Wescotts any written authority, or any other authority than as aforesaid, to sell and dispose of any portion of the separate interest, or of the joint and common interest, of these defendants in said tract. And these defendants further say, that these defendants were fully determined, on their part, not to prolong said time of one week further to said Todd and Codman, unless they, said Todd and Codman, should succeed, within said week, in getting up a company to go on and explore and examine, with a view to pur-

chase, said portion of said tract, provided said tract, on such exploration, should prove satisfactory to the persons contemplating to purchase the same. And these defendants further say, that, at the time last aforesaid, when these defendants agreed to prolong to said Todd and Codman the time in which they might make sale of the interests of these defendants included or intended to be included as part of the ten sixteenths mentioned in said bond, these defendants did verily believe that they could obtain a higher price per acre for their said interest than what the said Todd and Codman were, in and by said bond and agreement, to allow and pay these defendants therefor.

And these defendants further answering say, that Tristram G. Mitchell, one of these defendants, on or about the said ninth of June, did apply to and obtain from William D. Little certain letters then in said Little's hands, one of which letters was from Colonel Joseph E. Foxcroft, and another from William Cutter, in which letters the said Foxcroft and Cutter, as these defendants believe, expressed their opinions respecting the character of said Ford tract, the precise tenor of which letters the said Tristram says he does not remember, and the said William, for himself, says that he knows nothing about them. And the said Tristram admits that he did also obtain and receive from said Little a certificate signed by John Hill, the precise date, tenor, or contents of which the said Tristram does not remember, which said letters and certificate the said Tristram says he did put into the hands of said Todd, but without the knowledge, as said Tristram believes, either of William C. Mitchell, David Wescott, William Wescott, Erastus Hayes, Israel Waterhouse, Thomas Warren, or William B. Gooch. And the said Tristram, for himself, admits that he did state to the said Todd that the said Foxcroft, Cutter, and Hill were men of reputation and veracity, and that, in the opinion and judgment of said Tristram, the letters and certificate aforesaid did express truly the opinions of those who signed them. And the said Tristram says he has no recollection of having delivered to said Todd or said Codman any other letters or certificates relating to said Ford tract. And the said William, for himself, says, that he never delivered to said Todd and Codman any of the letters or certificates aforesaid, or any other certificates whatever relating to said tract. And the said Tristram, for himself, denies, and the said William, for himself, denies, that they did authorize and empower said Todd to take such measures and use such means to effect a sale of the ten sixteenths of said Ford tract, or any part thereof as said Todd should see fit; nor did the said Wescotts, or either of them, as these defendants verily believe, nor the said Hayes, Waterhouse, Warren, or Gooch, give to the said Todd and Codman, or either of them, any such power and authority.

And these defendants further answering say, that they have no recollection whatever of having stated or represented to said Todd, or of having authorized said Todd to state and represent, that Jonas

Brown, William Wescott, and John Hill, named in the complainant's bill of complaint, were men of respectability and integrity, and acquainted with timber and timber lands, and competent judges thereof, but these defendants do believe that said Brown and Hill are men of respectability and integrity, and that said Wescott was in his lifetime a man of integrity and respectability; and further, that said Brown was and is well acquainted with timber and timber lands, and a competent judge thereof, and that neither the said Brown nor the said Hill had any interest whatever in the ten sixteenths of said Ford tract covenanted to be conveyed to said Todd and Codman in and by the bond aforesaid of said David and William Wescott.

And these defendants further say, that they verily believe that said William Wescott, having it in contemplation to purchase a portion of said Ford tract, did, in May, 1833, in company with said Jonas Brown and Luther Moore, explore said Ford tract with a view to ascertain, as far as practicable, the character of said Ford tract as timber land; and that said Brown, being an experienced explorer, and having the reputation of being acquainted with timber and a competent judge thereof, did, according to his best skill and judgment in such exploration, make an estimate of the quantity of timber then on said Ford tract, and that, in order not to over-rate or over-estimate the quantity of timber on said tract, he put the amount less than he believed there was on said tract, and made and signed a certificate, with said William Wescott and Luther Moore, of the purport and to the effect of the one dated May 13, 1833, set forth in the complainant's bill of complaint, which said certificate, these defendants have been informed and believe, was delivered to said Todd by said David and William Wescott on or about the ninth day of June aforesaid.

And these defendants further answering say, that they never did in any way, directly or indirectly, authorize or empower the said Todd and Codman, or either of them, nor do these defendants believe that David Wescott and William Wescott, Erastus Hayes, Israel Waterhouse, Thomas Warren, William B. Gooch, or either of them, ever did authorize or empower the said Todd and Codman, or either of them, to undertake or assume to guaranty that the representations, statements, opinions, and estimates, in any of said letters and certificates mentioned in the complainant's bill of complaint, or in this answer of these defendants, were free from error in judgment on the part of the signers of such letters and certificates, or that the signers thereof had not been misinformed in regard to the quantity of timber on said Ford tract, and the nature of the streams running through the same; on the contrary, it was expressly understood and declared at all times by these defendants and the said Wescotts, for and in behalf of themselves, and for and in behalf of all other persons interested with them in said ten sixteenths, that these defendants, and the other persons inte-

rested with them in said ten sixteenths, would not take upon themselves nor agree to assume any responsibility whatever in regard to the correctness of any of the statements, estimates, and opinions, made and given in any of said letters and certificates by the signers thereof, but that whoever might contemplate purchasing, or propose to purchase, the interests of these defendants and others in said ten sixteenths, must on their own responsibility inquire and satisfy themselves, in such way as they might judge best, on all points in relation to said Ford tract, and especially in regard to the quantity and quality of timber on said tract, the nature of the streams running through the same, and the facilities of getting said timber to market. And these defendants and the said Wescotts did advise the said Todd, and recommend to him, not to agree to sell said ten sixteenths, or any part thereof, without an express stipulation on the part of the proposed purchasers that they should themselves go or send on to said tract, and there explore the same, and in that way satisfy themselves in regard to the nature and quality of said tract as timber land, before completing the purchase of said ten sixteenths. And the said Wescotts and the said Tristram did further advise said Todd, that the letters and certificates so delivered to said Todd, as herein before mentioned, were delivered to said Todd, to the end and for the sole purpose of showing what were the opinions and statements, in relation to said tract, of men who were reputed to be men of character and respectability, and who, from having been interested in said tract, or in lands in the vicinity of the same, or from having been on to said tract, were supposed, believed, and understood to have some knowledge of the nature and character of said Ford tract as timber land, and thereby, from the general reputation of said Ford tract, to encourage persons wishing to make a purchase of timber lands to go or send and explore said tract, and thus satisfy themselves in regard to the nature of said tract, the quantity and quality of the timber standing and growing thereon, the facilities of getting the same to market, the comparative value of said tract, and whether the purchase thereof, at the price at which it might be offered by said Todd, would be an advantageous purchase for those who might agree to buy the same.

And these defendants further answering say, that after the giving of the bond aforesaid by said Wescotts, the said William Wescott being unwilling, and altogether refusing, to prolong the time of ten days, in which said Todd and Codman, by the understanding and agreement of the parties, were to make sale of said ten sixteenths, Tristram G. Mitchell, one of these defendants, in behalf of himself and of William C. Mitchell, did agree, as the said Tristram says and said William believes, with said William Wescott, and did promise to take the whole interest of said William Wescott in said ten sixteenths, on the following terms, namely: that said Todd should be allowed to go on and attempt to make sale of said ten six-

teenths, and if the said Todd should not make sale of the same, then and in that case these defendants were to be considered as the purchasers of said William Wescott's interest in said ten sixteenths, and were to pay the said William Wescott therefor, according to the terms and stipulations contained in the bond of said David and William Wescott to said Todd and Codman—so that in no event should the said William Wescott miss the opportunity of making sale of said interest by any indulgence or further privilege, or allowance of further time to said Todd; all which was then mutually arranged, understood, and agreed upon in good faith, between said Tristram, for himself and William C. Mitchell, on the one part, and said William Wescott on the other part, in the presence and hearing of said David Wescott.

And these defendants further answering say, that they know nothing of the proceedings, doings, and representations of said James Todd, in his attempts and offers to sell said ten sixteenths of said Ford tract to the complainant; nor do these defendants know any thing about the employment or the doings of said Thomas W. Haskins, in aiding said Todd to find purchasers of said ten sixteenths; but these defendants do deny that they, or either of them, and as they fully believe, that said Wescotts, Hayes, Waterhouse, Warren, and Gooch, or either of them, ever did authorize and empower said Haskins, or authorize said Todd to empower said Haskins, to make any such representations and statements as the said complainant in his said bill of complaint has set forth and stated; nor did these defendants ever give to the said Todd any other or further power and authority in the premises, and touching the sale of said Ford tract, than these defendants, in this their answer, have herein expressly admitted and set forth. And afterward said Todd having informed said Tristram that he, said Todd, had made a provisional agreement for the sale of said ten sixteenths of said tract, and that he, Todd, was then on his way with Thomas W. Haskins, the agent of the persons who were proposing to make said purchase, for the purpose of going on to said Ford tract, so as to enable the said agent, and such persons as he might employ, to explore the same, and examine the streams, and ascertain such other facts as said agent, acting in behalf of said complainant and others, might deem important; and the said Todd having further represented that, being himself wholly unacquainted with the situation of the Ford tract, it was necessary that William Wescott, who had been on to said tract, should accompany him, said Todd, and assist him in conducting said Haskins, and such other persons as said Haskins might take with him, on to said Ford tract, in order that said Haskins, and those he might take with him, might explore said tract, for and in behalf of the complainant and others; and there, by actual exploration and examination on the tract itself, satisfy themselves in regard to the quantity and quality of the timber standing and growing on said tract, and the character of the streams running

through the same, and the facilities of getting the timber therefrom to market—the said Tristram, in company with David Wescott and said Todd, did apply to said William Wescott to accompany said Todd; and the said William Wescott objecting thereto, the said David and Tristram did promise and engage, for themselves and the others interested with them in said ten sixteenths, to pay to said William Wescott the sum of five dollars a day for his services in accompanying said Todd, and conducting him on to said tract; but these defendants deny that they and said David Wescott, Erastus Hayes, Israel Waterhouse, Thomas Warren, and William Gooch, or either of them, did request and employ said William Wescott and the said Todd to accompany the said Haskins in making the said contemplated exploration, with intent that said Wescott and Todd should endeavor to induce the said Haskins to make report to the complainant and others, that said Ford tract contained sixty millions of feet of pine timber, or any quantity whatever; on the contrary, these defendants do aver, that the only reason for so requesting and employing said William Wescott to accompany said Todd, was, that he, said William, was well acquainted with the situation of said tract, whereas the said Todd was wholly ignorant thereof. And these defendants further deny, that said Todd was employed at all by these defendants, or, as they verily believe, by said David, Erastus, Israel, Thomas, and Gooch, or either of them. And these defendants further admit, that said William Wescott did accompany said Todd in conducting said Haskins to make such exploration, for the purpose of leading said Haskins and those accompanying him on to said tract, and for no other purpose or object whatever, as these defendants verily believe.

And these defendants further answering say, that they have no knowledge whatever of any of the doings, sayings, and proceedings of the said Todd and William Wescott, in conducting said Haskins on to said tract, nor in the exploration of the same by said Haskins and those who accompanied him; nor have they any knowledge whatever of any of the certificates set forth in said complainant's bill of complaint, and dated June 26th, 1835; and these defendants deny that Jonas Brown, Luther Moore, John Hill, and Thomas Chase, or either of them, were induced, by some reward paid or promised by these defendants, or either of them, or by said David Wescott, William Wescott, Erastus Hayes, Israel Waterhouse, Thomas Warren, William Gooch, and James Todd, or either of them, as these defendants believe, to sign said certificates, that the said William Wescott or the said Todd, in conducting said Haskins on to said tract, or in the exploration thereof, or in showing the timber, or in the estimating, by Thomas Chase, of the quantity of timber on said tract, or in examining the streams running through said tract, did resort to any of the devices, artifices, or practices, which the complainant in his said bill of complaint has supposed; on the contrary, these defendants do verily believe that said Todd

and said William Wescott did, in, during, and about the said business of making said exploration and examination, conduct themselves towards the said Haskins, and those who accompanied him, not fraudulently, and with the intent to deceive and mislead, as the complainant in his bill of complaint has supposed and alleged, but fairly, honestly, and in good faith toward said Haskins, and toward those whose agent he was.

And these defendants further answering say, that the said Haskins, agent for the complainant and others, and duly authorized in this behalf, as these defendants were informed and verily believe, did, at Portland, on the 29th day of June, A. D. 1835, inform these defendants that he, said Haskins, having made the exploration and examination of said Ford tract, and being satisfied as to the quantity of timber thereon, and the nature of the streams running through the same, and the facilities of getting said timber to market, he, the said Haskins, acting for and in behalf of the complainant and others, his principals, had elected and determined in their behalf to make the purchase of said ten sixteenths, and had notified said Todd of the same; at which said time the said Haskins was on his return from exploring said tract, and had not made to the complainant any report, as these defendants believe, in relation to said exploration, or to the quantity of timber on said tract.

And these defendants further answering say, that at the time of signing and executing said bond, of the ninth day of June, William Wescott was interested to the amount of one thousand acres in said ten sixteenths, which said interest afterwards, and prior to the exploration of said Ford tract herein before mentioned, the said William Wescott did agree to transfer and convey to these defendants, as herein before in this their answer fully set forth and explained; but neither the said Luther Moore, Jonas Brown, John Hill, or any other person who signed any of said letters and certificates so delivered to said Todd, had any interest, as these defendants believe, in said ten sixteenths or any part thereof. And these defendants do verily believe that the several persons who signed said certificates were wholly disinterested in so doing, and that they had not, either of them, any reward or benefit, or expectation of reward or benefit, for so doing; and that the said William Wescott and said James Todd did not, nor did either of them, as these defendants believe, offer or promise to Luther Moore, or Thomas Chase, any compensation, or reward, or other inducement to cause them to sign said certificates, or either of them, or in any manner to induce said Haskins to report to the complainant that there was a large quantity of good pine timber on said Ford tract.

And these defendants further answering say, that these defendants, and said Wescotts, Erastus Hayes, Israel Waterhouse, Thomas Warren, and William B. Gooch, did claim to be interested in the ten sixteenths mentioned in the bond of said David and William Wescott at the time of the signing and execution thereof, in the

proportions following, that is to say: David Wescott claimed to be interested in one thousand acres, William Wescott one thousand acres—these defendants, jointly, two thousand acres; William C. Mitchell, one of these defendants, one thousand acres; Erastus Hayes one thousand seven hundred and fifty acres; Israel Waterhouse one thousand two hundred and fifty acres; Thomas Warren one thousand acres; and William B. Gooch one thousand acres.

And these defendants deny that they ever gave to said David Wescott, William Wescott, or James Todd, any other or further power and authority to do and act, or to make any representations or statement for them in relation to said Ford tract, or to the sale of the same, than these defendants have in this their answer expressly and fully set forth and admitted; and they further deny all knowledge of the representations, statements, reports, and doings of said Haskins in relation to said tract, excepting as herein in this their answer, in express terms stated, confessed, and admitted to be true.

And these defendants further answering say, that at the time when said Westcotts gave said bond to said Todd and Codman, and when the purchase under said bond was made by the complainant, these defendants did verily believe that said Ford tract contained, and had upon it, good pine timber more than sufficient to make sixty millions feet of boards; nor had these defendants any reason to suppose that it contained less quantity, nor have they any recollection of hearing the quantity estimated at less than sixty millions, excepting as by said certificate of Jonas Brown.

And these defendants further answering say, that said Todd did pay them for their joint interest in said two thousand acres the sum of two thousand two hundred and fifty dollars in cash, and did moreover deliver over to these defendants one promissory note, signed by the complainant, for the sum of four thousand three hundred and seventy-five dollars, which note these defendants gave to Oliver B. Dorrance, in part payment of the four thousand acres agreed to be sold to these defendants by said Dorrance; and the said Dorrance at the same time did further receive one other promissory note of the complainant for the like sum; which last promissory note was received by said Dorrance partly on account of these defendants, in part payment of said four thousand acres, and partly on account of William B. Gooch, in part payment of his one thousand acres; and the said William C. Mitchell did, at the same time, receive from said Todd, by the hands of said Tristram G. Mitchell, for and on account of the one thousand acres in which the said William had a separate interest, as herein before stated, the further sum of four thousand five hundred dollars, one quarter part cash, and the remaining three quarters in the promissory notes of Thomas G. Wells.

And these defendants further say, that, according to the best of their knowledge and belief, the said Wescotts, Hayes, Waterhouse, Warren, Gooch, and Todd, did, at the time when the complainant

and others made their purchase of the said ten sixteenths, fully believe that there was standing and growing at that time on said Ford tract, good pine timber sufficient, when sawed, to make sixty millions feet of boards and upwards.

And these defendants, each for himself, denies all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged, without there is any other matter, cause, or thing, in the complainant's bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the knowledge or belief of the defendants, or either of them. All which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and they hereby pray to be hence dismissed, with their reasonable costs and charges in their behalf most wrongfully sustained.

T. G. MITCHELL,
WILLIAM C. MITCHELL.

STATE OF MAINE, *Cumberland, ss:*

February 28th, 1837.

Then personally appeared T. G. Mitchell, and William C. Mitchell, and made solemn oath, that *that* the foregoing answer by them signed is true, according to the best of their knowledge and belief, before me,

JOHN L. MEGQUIER,
Justice of the Peace.

Know all men by these presents, that we, William Wescott and David Wescott, are holden and bound, and acknowledge ourselves indebted to William H. Codman and James Todd in the sum of ten thousand dollars, to the payment of which we bind ourselves, our heirs, executors, and administrators. Sealed with our seals, this ninth day of June, A. D. 1835.

The condition of the above obligation is such, that whereas the said William and David have this day agreed to convey to the said Todd and Codman part of township number two, in the second range, in the million acres in the county of Somerset, bounded as follows: beginning at the northeast corner of said township, thence west, on the north line of said township, about four and one half miles, to the west line of a tract of land sold to Captain J. Heald; then south on said east line, about two and a half miles, to the southeast corner of said tract; thence west, on the south line of said town, about a mile and three quarters, to the west line of said township; thence east, three hundred and eighty-two rods, to the corner of lot number eleven and twelve in the first range; thence north, six hundred and sixty rods, to the sixth range line of lots; thence east, on said sixth range line about three and a half miles, to the southwest corner of number three, seventh range;

thence north, two hundred rods, to a corner; thence east, two hundred forty-seven rods, to a corner; thence north, two hundred forty rods to the tenth range line; thence east, two hundred twenty rods, to the east line of said township; thence north, on said east line about three miles, to the first mentioned bounds. The parts which the said David and William hereby agree to convey being from ten to twelve thousand acres in common, and undivided in said tract above described, provided said Todd and Codman, or their assigns, shall pay, or cause to be paid to the said David and William, the sum of four dollars for each acre, in manner following, to wit: one quarter part cash, and the remainder in three equal annual payments, with interest annually, on good and sufficient security. Now, if the said Codman and Todd, or their assigns, shall within thirty days perform, or tender to perform, the above conditions, and said David and William shall thereupon cause to be executed and delivered a deed from Mason Greenwood, of the title which William derived from Massachusetts, then this deed shall be void, otherwise to remain in full force.

WILLIAM WESCOTT, [L. S.]
DAVID WESCOTT, [L. S.]

Witness—SOLOMON CROCKETT.

To the honorable the Circuit Court of the United States, for the First Circuit.

Answer of I. Waterhouse.

The answer of Israel Waterhouse, one of the defendants, to the bill of complaint of Otis Daniell, complainant.

This defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that some time early in the spring of the year one thousand eight hundred and thirty-five he was informed by Erastus Hayes, that he, said Hayes, had heard of a very valuable tract of timber land, a part of which, he, said Hayes, was then negotiating with one Crocker with a view to a purchase; said tract of land being usually known by the name of the Ford tract; whereupon this defendant requested said Hayes to allow this defendant to be the purchaser of a part of what he, said Hayes, might agree to buy of said Crocker; and accordingly, the said Hayes having closed the bargain with said Crocker, as the said Hayes informed this defendant, for three thousand acres in said Ford tract for and at the rate of three dollars and fifty cents the acre, this defendant did agree to take of said Hayes, one thousand two hundred and fifty acres, part of said three thousand

acres; and did, on the twentieth day of March, in the same year, pay to said Hayes the sum of one thousand ninety-three dollars and seventy-five cents, being the one quarter part of the purchase money of said twelve hundred and fifty acres. And this defendant was induced to agree to make said purchase by the general reputation of said Ford tract in the market as a fine tract of timber land.

And this defendant further answering says, that some time in the month of June then next following, this defendant was called upon by said Hayes, and informed by him, that James Todd had made a provisional agreement for the sale of the interest of this defendant in said Ford tract, in connection with the interest of several other persons, and was, in case the sale was completed, to allow this defendant for, and at the rate of four dollars and fifty cents the acre, which said information was the first notice that this defendant had in regard to any attempt or authority on the part of said Todd to sell any portion of said Ford tract; and this defendant did then agree verbally, that said Todd might have this defendant's interest in said tract for, and at the rate of four dollars and fifty cents the acre, one quarter part in cash, and the remaining three quarter parts in good notes, payable in one, two, and three years, with interest, annually; and accordingly, the said Todd did afterwards pay over to this defendant on or about the first of July then following, in cash and notes, to the amount of five thousand, six hundred, and twenty-five dollars, none of which notes, however, were the notes of said complainant; and thereupon the interest of this defendant in said one thousand two hundred and fifty acres was placed at the disposition of said Todd, and the legal title therein and thereto was conveyed according to the order and direction of said Todd; but to whom, this defendant does not recollect.

And this defendant further says, that he never received any writing from said Hayes, agreeing or promising to convey, or cause to be conveyed to this defendant, said twelve hundred and fifty acres, nor any writing whatever from said Hayes, or any person whatever—that he never gave to said Todd any authority or power whatever, nor authorized any other person so to do—that this defendant simply and merely assented to the sale of his land or interest as herein before stated, on condition of receiving four dollars and fifty cents the acre therefor.

And this defendant further answering says, that he knows nothing of the actings, sayings, doings, statements, and representations of said Todd, as set forth in said complainant's bill of complaint; nor does this defendant know any thing about any of the certificates mentioned and set forth in the complainant's bill of complaint; nor did this defendant ever see the same; nor did he know there were any such certificates until long after this defendant had ceased to have any interest in said Ford tract; nor does this defendant know how said certificates were procured, or

who procured them; nor does this defendant know any thing about the sayings, doings, and representations of Thomas W. Haskins in relation to said Ford tract, excepting, that said Haskins as the agent of persons proposing to purchase a portion of said tract did, toward the latter part of June, A. D. 1835, go to explore and examine said Ford tract with a view to ascertain the true character thereof as timber land, the said Todd, Haskins, and William Wescott, being then on their way to make said exploration, as this defendant was then informed by them, or by one of them.

And this defendant further answering says, that he knows nothing of the sayings, statements, and representations and doings of said William Wescott, while the said Haskins was making said exploration. This defendant well knew the said William Wescott in his lifetime, and always believed him to be a man of integrity and respectability; and this defendant has no reason to believe, nor does he believe, that said Wescott did resort to any of the devices, pretences, artifices, or practices, in accompanying said Haskins in making said exploration, that the complainant has in and by his bill supposed and alleged; nor that any of the persons who signed any of the certificates mentioned or set forth in said bill, were induced by said Wescott or said Todd to sign the same, as the complainant in his said bill has supposed and stated; or that said Wescott and said Todd, in conducting said Haskins and those who accompanied him on to said tract, or during the exploration thereof, or in the estimating of the quantity and quality of the timber on said tract, did conduct themselves otherwise toward said Haskins, and toward those who accompanied him, than with fairness and honesty, and good faith. And this defendant avers, that he did not, nor does he believe that David Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Thomas Warren, or William B. Gooch, did request or employ said William Wescott to accompany said Haskins in making said contemplated exploration, with intent that said Wescott and said Todd should endeavor to induce the said Haskins to make report to the complainant and others, his principals, that said Ford tract contained sixty millions of feet of pine timber, or any quantity whatever; but this defendant does believe, that said William Wescott was employed to accompany said Todd, solely for the purpose of leading said Todd and Haskins on to said tract, and thus to enable the said Todd to fulfil his agreement with the complainant and others, to conduct said Haskins on to said tract, to the end that said Haskins, and those who accompanied him, might there explore the same, in such manner as the said Haskins might then think proper and direct.

And this defendant further answering says, that he is well acquainted with John Hill mentioned in said complainant's bill, and that said Hill is a man of integrity and respectability; that he is not as well acquainted with Jonas Brown, but has often heard him spoken of as a man of respectability, well acquainted with timber and timber lands, and a good judge thereof, and this defendant has no doubt that such is his character and standing.

And this defendant further answering says, that he has no knowledge, by hearsay or otherwise, nor does he believe that said James Todd and William Wescott did offer or promise to Luther Moore or Thomas Chase, any compensation, reward, or inducement whatever, to cause them, or either of them, to make or sign any of the certificates in said complainant's bill mentioned, or promise or give anything to said Moore or Chase, for having made or signed the same, or to induce them, or one of them, to endeavor to cause the said Haskins to believe, or to make report to the complainant, or to any other person, that said tract contained a large quantity of pine timber, or any quantity thereon; nor does this defendant believe that either the said Jonas Brown, Luther Moore, John Hill, or Thomas Chase, had any interest in said ten sixteenths, mentioned in said complainant's bill of complaint, but were wholly disinterested.

And this defendant further answering says, that he has no knowledge, nor does he believe, that said Todd was employed by any one to accompany said Haskins in making said exploration, or that he ever received any pay or compensation whatever, therefor, from said David Wescott, William Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Thomas Warren, William B. Gooch, or this defendant. But this defendant has been informed, and has no doubt, that the said William Wescott was sent, in behalf of those interested in said ten sixteenths, to point out to said Todd and Haskins what tract was the Ford tract, and for no other purpose, and that he was to receive, and did receive, for his services, in conducting said Todd and Haskins on to said tract, for and at the rate of five dollars per day, the said Todd being wholly unacquainted with said tract, and that region of country. And, on a final adjustment, this defendant consented to pay, and did pay, his proportion of said five dollars per day, together with his proportion of said William's travelling expenses, and no more.

And this defendant further answering says, that such was his confidence in the general reputation of said Ford tract, that he was not satisfied to sell his interest therein at so low a rate as four dollars and fifty cents the acre, although he finally assented thereto; that from its general reputation, he fully believed, and had no doubt, that at the time when said Todd sold said ten sixteenths, there were more than sixty millions of good pine timber thereon; nor had this defendant at that time heard the quantity of good pine timber, exclusive of spruce and cedar, estimated at less than sixty millions. Nor had this defendant ever seen, at that time, any statements or certificates that the said tract contained less than sixty millions. And this defendant verily believes that said David Wescott, William Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Thomas Warren, and William B. Gooch, did, each of them, fully believe that there were not less than sixty millions of good pine timber on said Ford tract.

And this defendant denies all and all manner of unlawful confederacy and combination, wherewith he is by the said bill charged, without there is any other matter, or thing, or cause, in the complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the knowledge or belief of this defendant; all which matters and things, this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and he hereby prays to be hence dismissed, with his reasonable costs and charges, in his behalf most wrongfully sustained.

ISRAEL WATERHOUSE.

STATE OF MAINE, *Cumberland, ss:*

February 25, 1837.

Then personally appeared Israel Waterhouse, and made solemn oath that the foregoing answer, by him subscribed, is true according to the best of his knowledge and belief.

Before me, JOHN LOUVILLE MEGQUIER,
Justice of the Peace.

To the honorable the Circuit Court of the United States for the First Circuit.

Answer of D. Wescott.

The answer of David Wescott, one of the defendants to the bill of complaint of Otis Daniell, complainant.

This defendant now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that this defendant and William Wescott, having it in contemplation to purchase a portion of the tract of land set forth and described in the complainant's bill of complaint, called the Ford tract, William Wescott, at the request of this defendant, about the first of May, A. D. 1833, went to explore and examine the same. And this defendant and said William, well knowing Jonas Brown to be a man of integrity and respectability, and well acquainted with timber and timber lands, and, as this defendant and said William verily believed, a competent judge thereof, the said William was advised by this defendant to employ the said Brown to accompany said William, in exploring said tract, in order that said Brown might, from actual exploration and his own observation, and by calculations based thereon, estimate the quantity and quality of timber then standing and growing on said tract, and report the nature of the streams penetrating into said tract, so

that this defendant and said William, from said estimate and examination, might be enabled to form their own judgment whether the tract were a good tract of timber land, and whether it would be for the interest of this defendant and said William to make the contemplated purchase.

And the said William and said Brown did accordingly proceed to make said exploration and examination, accompanied by Luther Moore, who, from his occupation as a hunter, had before that time been led to traverse said Ford tract, and was supposed and believed to have gained some knowledge of the laying of the land, and of the nature and character of the growth on the different parts of said tract; and after diligently and carefully exploring different parts of said tract, for and during the term of between seven and eight days, taking all measures of precaution deemed necessary to guard against mistake, and keep within the quantity, so as to be sure not to overrate or over estimate the amount, the said Brown did then declare to said William, as the said William did immediately on his return inform this defendant, and as this defendant verily believes, that there were nearer eighty millions than fifty millions of good pine timber on said tract; but, in order to be perfectly safe, he, said Brown, would put the estimate at fifty millions, for he should be willing to swear there was at least that amount, or words to that effect. And accordingly the said Brown did, on the thirteenth day of May, A. D. 1833, make and sign, and said Luther did also sign, the certificate of that date set forth in the complainant's bill of complaint, to which said certificate the said William also affixed his signature as expressive of his own confidence in the same, and then received the same from said Brown, and brought and exhibited the same to this defendant, as containing the result of the exploration and examination aforesaid.

And this defendant further says, that such was the confidence of this defendant, and of said William, in said Brown's judgment and estimate, and such their convictions in regard to the character of said Ford tract, as timber land, that although this defendant had made a provisional agreement to take only three thousand acres, at one dollar sixty-seven cents the acre, in case said tract, on such exploration, should prove satisfactory to them, they not only completed the purchase of said three thousand acres, but moreover, at the same time, made a further purchase of three thousand acres more, at the increased price of over forty cents per acre over and above what this defendant and said William were to give for the first three thousand acres.

And this defendant further answering says, that some time in the month of May, A. D. 1835, he was applied to by William H. Codman to give said Codman and James Todd a bond to convey to them what interest this defendant could command belonging to himself and his friends in said Ford tract, and this defendant and William Wescott accordingly did give to said Codman and Todd a bond for

six thousand acres in said tract, but the said Codman and Todd not having effected a sale of said six thousand acres, said bond was, early in June of that year, surrendered up and cancelled. At the same time the said Codman and Todd applied to this defendant and said William Wescott for another bond, representing to this defendant and said William that whoever might wish to purchase of said Codman and Todd, would wish to purchase the major or commanding part of the whole interest in said tract, and that therefore they, said Codman and Todd, wanted a bond covenanting to convey to them ten thousand acres, being ten sixteenths of the Ford tract, so called.

And this defendant further says, that having consulted with William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, and Thomas Warren, who each consented, so far as his own interest was concerned, that their respective interests in said tract might be sold, and that this defendant and William Wescott might give a bond on the terms agreed upon to convey ten sixteenths of said tract, and that so much of the respective interests of said Mitchells, of Erastus Hayes, and Israel Waterhouse, and of Thomas Warren, should be at the command of this defendant and said William Wescott, as with the two thousand acres in which this defendant and said William then had an interest, (being what was then undisposed of by them of the six thousand acres of their original purchase,) would make up the ten thousand acres, or ten sixteenths of said Ford tract. And this defendant further says, that there, on the ninth day of June, in the year of our Lord one thousand eight hundred and thirty-five, this defendant and said William Wescott did sign, seal, and deliver to said William H. Codman and James Todd, a bond of that date, conditioned to convey to said Todd and Codman from ten to twelve thousand acres, in common and undivided, in said Ford tract, provided said Todd and Codman, or their assigns, should pay, or cause to be paid, to this defendant and said William Wescott, the sum of four dollars for each acre, in the manner in said bond mentioned. And if the said Todd and Codman, or their assigns, should, within thirty days from the date of said bond, perform, or tender to perform, the conditions on their part to be performed, and thereupon the said William Wescott and this defendant should cause to be executed and delivered a deed, from Mason Greenwood, of the title which said William derived from Massachusetts, then the said bond was to be void; which said bond is hereunto annexed, and referred to as part of this defendant's answer.

And this defendant further says, that at the time when this defendant and said William Wescott gave to said Todd and Codman the bond last aforesaid, the said Todd and Codman, not intending to make the purchase unless they could effect a resale, it was expressly understood and agreed by the said Todd and Codman, on the one part, and by this defendant and William Wescott, on the other, that said Todd and Codman should forthwith proceed and endeavor to effect a resale of said ten sixteenths, and unless they should succeed

in finding a company within ten days who would agree to purchase said ten sixteenths on condition that they should be satisfied with said tract on exploration thereof by them, or by persons appointed by them for that purpose, and should thereupon proceed to make such exploration, with a view to purchase said tract if satisfied therewith, then said bond should be surrendered up, and be cancelled. And this defendant further says, that unless said Todd and Codman would have consented and agreed, and had assented and agreed, so to proceed forthwith and endeavor to effect a resale, and so to surrender up said bond, to be cancelled, in case they should not succeed in finding a company as aforesaid, and for the purposes aforesaid, within ten days, this defendant and said William Wescott would not have consented to give, and would not have given, said bond, of the ninth of June, to said Todd and Codman, because there were other persons who had applied for a bond from this defendant and said William Wescott, and were solicitious to procure one, and this defendant and said William had actually made out and signed such a bond to Ephraim Brown, and were only prevented from delivering the same by the representations of said Todd and Codman that they had already incurred expense under the first bond, and that, in their opinion, they had some claim for some further privilege on that account.

And this defendant further says, that said Todd and Codman having failed to proceed forthwith to effect a resale, as they had agreed, this defendant, and William Wescott, and Tristram G. Mitchell, for themselves, and the other persons interested in the said ten sixteenths, did then call upon said Todd and Codman, and did insist that they should then surrender up said bond, and that the same should be cancelled; but the said Todd and Codman being very desirous to hold said bond, and said William Wescott wholly refusing to consent to the same, William C. Mitchell and Tristram G. Mitchell did then propose to said William Wescott to purchase out the said William Wescott's interest in said ten sixteenths, and thereupon, a bargain was made and concluded between said William Wescott and William C. Mitchell and Tristram G. Mitchell, that said Mitchells should take the interest of said William Wescott at four dollars the acre, and should further allow to said William, in case said Todd and Codman should effect a resale thereof, whatever the other owners in said ten sixteenths might receive from said Todd and Codman over and above four dollars per acre; and this defendant was then called upon to bear witness that such was the agreement and bargain between said William Wescott and said Mitchells, in regard to said Wescott's interest in said ten sixteenths. And the said William Wescott having thereupon declared, that as he no longer had any interest in said ten sixteenths, he had no further objection to make; this defendant and the said Mitchells, for themselves, and in behalf of the other persons interested in said ten sixteenths, did agree with said Todd and Codman, that they, said

Todd and Codman, might hold said bond one week longer and no more, and that unless said Todd and Codman should succeed in finding persons within the week, who would agree to purchase said ten sixteenths, provided said tract proved satisfactory on exploration, and should make a provisional agreement with such company to that effect, and should proceed to make such exploration with a view to purchase, said bond should then finally be surrendered up, without further delay on the part of said Todd and Codman; and in case said Todd and Codman should so succeed within said week, and should ultimately effect a resale of said ten sixteenths under said bond, then the said Todd and Codman should, in that case, allow and pay to the owners or persons interested in said ten sixteenths, in addition to the four dollars per acre mentioned in said bond, the one-half what said ten sixteenths should be sold for by said Todd and Codman over and above four dollars the acre; all which was then assented to and agreed upon by the said Todd and Codman on the one part, and by this defendant and said Mitchells for themselves, and the other persons interested in said ten sixteenths, on the other.

And this defendant further says, that the said Ephraim Brown was still writing and solicitous to obtain from this defendant, and the other persons interested in said ten sixteenths, a bond for the conveyance thereof, and in consequence of the encouragement which this defendant and others had given to said Ephraim, that they would be able to give him such a bond, and the disappointment of said Ephraim by said Todd's effecting a provisional sale of said ten sixteenths, this defendant and said Mitchells and others, did agree to pay to said Ephraim, and did pay him, as an indemnity, the sum of two hundred dollars.

And this defendant further says, that the bond hereinbefore mentioned, and hereunto annexed, is all the authority and power, written or verbal, according to the best of this defendant's knowledge and belief, which the said Todd and Codman had or received to sell said ten sixteenths, or any part thereof, from this defendant, or from said William Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, William B. Gooch, or either of them.

And this defendant further says, that soon after the execution of the first bond hereinbefore mentioned, by this defendant, to said Todd and Codman, as this defendant believes, this defendant was requested by said Todd and Codman, or one of them, to give them whatever papers this defendant had in relation to said Ford tract; and, thereupon, the said William Wescott did, as this defendant believes, deliver to said Todd and Codman, or one of them, the certificate made and signed by Jonas Brown, and also by Luther Moore and William Wescott, hereinbefore mentioned and set forth in the complainant's bill of complaint, which said certificate is all the certificate delivered to said Todd or Codman, to the knowledge

of this defendant, or of which he has any knowledge, respecting the quantity of timber on said Ford tract, or in respect to the streams penetrating into the same.

And this defendant further says, that at the time of delivering said certificate to said Todd and Codman, or one of them, this defendant did advise and recommend to said Todd and Codman, to make no other use of said certificate, or of any certificates in relation to said tract, than as affording sufficient grounds to induce any person who might propose to purchase timber lands, to go themselves or send and explore said Ford tract, and in that way see for themselves, or satisfy themselves as to the quantity of timber on said tract, and as to the nature of the streams penetrating into the same. And this defendant well remembers that he did, on his own responsibility, and without any authority therefor, from any other person interested in said ten sixteenths, further say to said Todd and Codman, or one of them, that if any persons wishing to make a purchase of timber lands, and proposing to purchase said ten sixteenths, would select their own explorer and send him on to said tract, and there thoroughly examine and explore the same, this defendant would engage to pay the whole of the expense of such exploration out of his own pocket, if such explorer, selected by the proposed purchasers themselves, did not estimate and report the quantity of timber on said tract at as much as fifty millions.

And this defendant says, that he never gave to said Todd and Codman, or to either of them, any other or further power, or authority, instruction, direction, or permission, in regard to the sale of said ten sixteenths of said Ford tract, or in regard to any statements or representations respecting said tract, or respecting the quantity of timber standing and growing thereon, or in respect to the nature of the streams penetrating into the same, or in respect to expense and facilities of cutting and getting the timber to market, than this defendant in this his answer has expressly stated and admitted; nor within the knowledge or belief of this defendant, did William Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, or William B. Gooch, or either of them, ever give directly or indirectly, or intend to give to said Todd and Codman, or either of them, any other further or greater power and authority in relation to said Ford tract, or any representations or statements respecting the same, than merely that they, said Todd and Codman, might, under said bond of the ninth of June, bargain away and dispose of the respective interests of said Wescotts, Mitchells, Hayes, Waterhouse, Warren, and Gooch, in said ten sixteenths, for the benefit, profit, and advantage, of said Todd and Codman, they, said Todd and Codman, paying, and securing to be paid, to said Wescotts, Mitchells, Hayes, Waterhouse, Warren, and Gooch, respectively, on said sale, four dollars per acre, for their respective interests, together with one-half what said Todd and Codman might, on a resale, obtain for said ten sixteenths, over

and above four dollars per acre; it being distinctly understood and declared expressly, that said Wescotts, Mitchells, Hayes, Waterhouse, Warren, and Gooch, would not assume, or agree to assume, or take upon themselves, or authorize the said Todd and Codman to assume in their behalf, any responsibility or obligation whatever, in regard to the quantity of timber on said tract, the nature of the streams running through the same, or the facilities of getting said timber to market; but that on all those points, and such others as the proposed purchasers might deem it for their interest to know, the persons so proposing or contemplating to purchase, must explore said tract themselves, and make their own estimates and calculations and satisfy themselves, on their own responsibility, and in their own way. And this defendant denies that he did, or that to the best of his knowledge and belief the said William Wescott, or the said Mitchells, the said Hayes, Waterhouse, Warren, or Gooch, did authorize and empower said Todd to take such measures and use such means to effect a sale of said ten sixteenths, as said Todd should see fit.

And this defendant further answering says, that he has no knowledge of the sayings, doings, statements, or representations, of said Todd in effecting a sale, or making a contract for the sale, of said ten sixteenths, or any part thereof, to the complainant, nor has this defendant any knowledge whatever of the statements and representations of said Todd to Thomas W. Haskins, nor whether he made any such statements and representations to said Haskins, as the said complainant, in his bill of complaint, has supposed and set forth, nor has this defendant any knowledge whatever of the statements or representations of said Haskins to said complainant.

And this defendant further says, that within the week allowed to said Todd and Codman, as hereinbefore mentioned, the said Todd did notify this defendant that he, said Todd, had made a provisional agreement for the sale of said ten sixteenths covenanted to be conveyed to said Todd and Codman in and by said bond of the ninth of June, and that he, said Todd, had agreed to conduct the agent of the persons with whom he had made said provisional agreement on to said tract, in order that said agent, and those whom said agent might employ for that purpose, might there, on said tract, examine and explore the same, so that they might estimate for themselves the quantity of timber thereon, and judge for themselves in regard to the character of the streams penetrating into the same; and the said Todd did then request this defendant to aid him, said Todd, in persuading William Wescott to accompany said Todd and lead him and said agent on to the Ford tract, alleging, as a reason therefor, that said William well knew where said tract lay, and could conduct said Todd on to said tract without any danger of mistake, whereas said Todd never was in that region of country in his life, and was wholly unacquainted with traversing woods. And the said Todd did further urge, that he had a right to insist that the persons

interested in said ten sixteenths should send a person with said Todd so that he, said Todd, might be enabled to conduct said agent on to said tract. And this defendant and Tristram G. Mitchell, at the solicitation of said Todd, did, with said Todd, apply to and urge said William to go with said Todd and conduct him on to said Ford tract; and, in order to induce the said William to go with said Todd, this defendant and said Tristram did agree to allow and pay to said William five dollars per day and his travelling expenses. And accordingly the said William did agree to go with, and did go with, said Todd for the sole purpose of leading and conducting said Todd and said agent on to said Ford tract, and for no other purpose and with no other intent, understanding, agreement, or authority whatever.

And this defendant does deny, that this defendant, and, according to the best of his knowledge and belief, that said Mitchells, Hayes, Waterhouse, Warren, and Gooch, or either of them, did request and employ said William Wescott and the said Todd to accompany said Haskins in making said contemplated exploration with intent that said William Wescott and the said Todd should endeavor to induce the said Haskins, after such exploration, to make report to the complainant, or any other persons, that said tract contained as great a quantity of timber as was mentioned in the contract between said complainant and others and the said Todd, or any quantity whatever, or that said William was in any way authorized, directly or indirectly, or wished, by this defendant, or by said Mitchells, Hayes, Warren, Waterhouse, and Gooch, to interfere, in any way whatever, with said Haskins or those who might accompany him in the conducting, ordering, or making said exploration, or in the estimating the quantity of timber on said tract, or in judging and examining, in respect to the streams penetrating into said tract, or in relation to the report which said Haskins might make to the said complainant and others. On the contrary, this defendant does aver that the only reason for this defendant or said Tristram wishing the said William Wescott to accompany said Todd and Haskins, was the solicitations of said Todd, and the fact that said William well knew where said tract lay, whereas said Todd was wholly ignorant thereof.

And this defendant further says, that he knows nothing of the statements and representations of said Todd to said Haskins, stated and set forth in the complainant's bill, nor whether the said Todd ever made any such statements and representations either prior to, during, or subsequent to, said exploration, nor does this defendant know any thing respecting the proceedings, statements, and representations attributed in and by the complainant's bill to said William Wescott, nor whether the said William ever made to said Haskins any such statements and representations as the said complainant, in his said bill, has supposed and set forth.

This defendant was informed, and does believe, that, at the suggestion of said William Wescott, the said Todd did, at his own ex-

pense, engage and employ Luther Moore as a guide in the woods, he, the said Moore, being a hunter by occupation, and well acquainted with traversing the woods, and able to preserve a knowledge of where he was without the danger of getting lost. And this defendant was informed, and believes, that the sole object of engaging and employing said Moore, either on the part of said William Wescott or on the part of said Todd, was that said Moore might act as a guide for said Todd and Haskins in traversing the woods, and for no other purpose whatever. And this defendant further says, that he has no knowledge or belief that said Todd, William, and Moore did have recourse to, or employ, any of the devices, pretences, or fraudulent practices and means in the guiding and conducting of said Haskins, Robert W. Molineux, and Thomas Chase, or in exploring said Ford tract, or in pointing out timber or trees, or in visiting and revisiting the same glades or berths of timber, mentioned in said complainant's bill. Nor has this defendant any knowledge or belief that said Todd, Moore, and William Wescott did, or that either of them did, intend or attempt to deceive, or mislead, or influence the said Haskins, Chase, and Molineux either in making said exploration or in regard to the trees standing and growing on said tract, or in relation to the streams penetrating into said tract, or in respect to the quantity or quality of the timber standing and growing on said tract.

And this defendant further says, that he has no knowledge or belief that said William Wescott did, during the whole time of said exploration, or at any time during said exploration, endeavor to persuade and induce the said Haskins, by various means, representations, and declarations, or by any means, to report to the complainant that said tract contained good pine timber, more than sufficient to make sixty million feet of boards; on the contrary, this defendant has been informed, and verily believes, that said William Wescott did abstain from any attempts or endeavors to influence said Haskins in any respect whatever as to the report which said Haskins might make in respect to the quantity of timber on said tract. And this defendant further says, that he has no knowledge or belief that said William Wescott and James Todd, or either of them, did induce Thomas Chase to make the written certificate and statement signed by him, or did induce Luther Moore to make the certificate or statement in writing signed by him, each bearing date June 26, 1835, and set forth in the complainant's bill of complaint.

And this defendant further answering says, that he has no knowledge or belief that the certificates aforesaid, or the report of the said Haskins, did induce the said complainant to purchase any part of the Ford tract; on the contrary, this defendant was informed, and believes, that the said Haskins was authorized by the complainant to decide whether the said complainant, and others for whom said Haskins was agent, would make said purchase; and that said Haskins did decide and notify said Todd that the said com-

plainant and others would make said purchase there on said tract, and before the making and signing of the certificates last aforesaid, and before the said Haskins had, or could have, made any report whatever to said complainant in regard to the quantity of timber on said tract; and this defendant was accordingly notified thereof by said Todd, in order that this defendant should hold himself in readiness to cause the condition of the bond of this defendant and said William Wescott, of the ninth of June, to be fulfilled on the part of this defendant and said William.

And this defendant further says, that the said Todd and Codman, about the last of June or first of July, A. D. 1836, having complied with the conditions of said bond of the ninth of June, on the part of said Todd and Codman, to be complied with and fulfilled by paying to this defendant and the other persons interested in said ten sixteenths, for their respective portions or shares thereof, in cash or promissory notes, at the rate of four dollars and fifty cents the acre, the said Mason Greenwood was authorized to convey, and did convey, the legal title to said ten sixteenths to such persons as the said Todd did there direct and order, in fulfilment of the condition of said bond on the part of this defendant and William Wescott to be done and performed; but to whom the same were conveyed this defendant does not remember, but he does remember that Otis Daniell, the complainant, was one. But this defendant denies that said Todd, in receiving the cash and notes from the persons to whom he had contracted to convey said ten sixteenths, and from their assigns, and in paying to this defendant and the other persons interested in said ten sixteenths cash and notes for their respective rights and interests, at the rate of four dollars and fifty cents the acre, said Todd was acting, or was regarded or considered as acting, as the agent of this defendant, William Wescott, William C. Mitchell, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, and William B. Gooch, unless the facts herein in this answer stated and admitted do, in law and equity, constitute the said Todd their agent.

And this defendant further says, that he fully believes William Wescott in his lifetime was a man of respectability and integrity—that he knows nothing more about Luther Moore than he has herein already stated, and that he has no knowledge of John Hill or Thomas Chase—that this defendant has no knowledge, nor does he believe that said Wescotts, Mitchells, Hayes, Waterhouse, Warren, Gooch, or Todd, or either of them, did pay or promise any reward to said Brown, Moore, Hill, and Chase, or either of them, to induce either of them to sign any of the certificates mentioned in said complainant's bill; nor did they, or either of them, promise, or give, or offer, to said Moore and Chase, or either of them, any reward, compensation, or inducement, or benefit, to induce them, or one of them, to endeavor to cause the said Haskins to believe, or to make report to the complainant, that said Ford tract contained a large quantity of good pine timber thereon, or any quantity.

And this defendant further says, that to the knowledge or belief of this defendant, neither the said Jonas Brown, John Hill, Luther Moore, or Thomas Chase, had any interest whatever in said ten sixteenths, nor in the sale thereof; nor had the said William Wescott or the said James Todd any interest in said ten sixteenths, or in said Ford tract, or in the sale thereof, which was not fully understood by, and well known to said Haskins, at the time of said exploration, as this defendant verily believes; nor had the said William Wescott any other interest in said ten sixteenths, as this defendant believes, than what arose from his having signed said bond of the ninth of June, and his agreement and bargain herein before stated with William C. Mitchell and Tristram G. Mitchell, by which he agreed to assign all his interest in said ten sixteenths to said Mitchells.

And this defendant further says, that of the aforesaid ten sixteenths, this defendant had an interest in one thousand acres. William Wescott, one thousand acres, agreed to be assigned and transferred to William C. Mitchell and Tristram G. Mitchell as herein stated. William C. Mitchell, one thousand acres. William C. Mitchell and Tristram G. Mitchell, two thousand acres. Erastus Hayes, one thousand and seven hundred and fifty acres. Israel Waterhouse, one thousand two hundred and fifty acres. Thomas Warren, one thousand acres. William B. Gooch, one thousand acres. And this defendant did receive of said Todd cash and notes to the amount of four thousand five hundred dollars, and also all the parties interested, received their pay, as this defendant believes, out of the notes and cash received by said Todd.

And this defendant further says, that said Todd was not employed or paid by this defendant, nor as he believes, by said Mitchells, Hayes, Warren, Waterhouse, Gooch, or William Wescott, or either of them, or caused by them, or either of them, to go with said Haskins in making said exploration; nor was any thing delivered or promised to said Todd for so accompanying said Haskins.

And this defendant further says, that at the times mentioned by the complainant in his bill, this defendant did really believe, and he has no doubt, that William Wescott, said Mitchells, Hayes, Waterhouse, Warren, Gooch, and Todd, each fully believed that said Ford tract did contain, and have upon it, good pine timber sufficient to make sixty millions feet of boards; nor had this defendant ever heard, or had reason to believe or suspect, that said tract contained less than that quantity; nor had this defendant ever heard or seen statements or certificates that said tract contained less than from fifty to eighty millions.

And this defendant further answering says, that he understood and believes, that at the time said Mason Greenwood executed his said deed to the persons named, and according to the directions given by said Todd, the said Todd did pay over to the several persons interested in said ten sixteenths the notes and cash received

by him in payment therefor, after deducting and reserving five thousand dollars, but to whom the notes of any particular person was delivered this defendant does not remember, nor did he fully know at the time, as he now believes; but this defendant believes, that no note given by Otis Daniell the complainant, mentioned in said complainant's bill, ever came into the hands and possession, or was paid away or appropriated to the use or benefit of this defendant.

And this defendant further answering says, that he has no knowledge whatever of any other certificates than the certificate dated May 13, 1833, as herein before stated, nor whether any other certificates than the one aforesaid were delivered to said Todd; that said certificate of Jonas Brown was delivered to said Todd and Codman for the purpose of showing what were the opinions of the individuals who signed said certificate in respect to said tract, and to afford to any persons wishing to purchase timber lands reasonable grounds to induce them to go, or send, and examine and explore said Ford tract, and for that purpose only. The said certificate was not delivered to said Todd for the purpose of being exhibited or represented as free from error in judgment or opinion in the estimate or statement contained in said certificate on the part of the signers thereof, or that said Todd should exhibit it as absolutely correct and true, or that he should assume any responsibility in respect to the same, other than that said certificate was believed to state correctly and truly the opinions of those who signed the same.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without there is any other matter, or thing, or cause, in the complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the best of the knowledge or belief of this defendant—all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and he hereby prays to be hence dismissed, with his reasonable costs and charges in his behalf most wrongfully sustained.

DAVID WESCOTT.

Know all men by these presents, that we, William Wescott and David Wescott, are holden and bound, and acknowledge ourselves indebted to William H. Codman and James Todd in the sum of ten thousand dollars, to the payment of which we bind ourselves, our heirs, executors, and administrators.

Sealed with our seals, this ninth day of June, A. D. 1835.

The condition of the above obligation is such, that whereas the said William and David have this day agreed to convey to the said Todd and Codman, part of township number two, in the second range in the million acres in the county of Somerset, bounded as

follows: beginning at the northeast corner of said township—thence west, on the north line of said township about four and one half miles, to the west line of a tract of land sold to Capt. J. Heald—thence south, on said east line about two and a half miles, to the southeast corner of said tract—thence west, on the south line of said town about a mile and three quarters, to the west line of said township—thence east, three hundred and eighty-two rods, to the corner of lot number eleven and twelve in the first range—thence north, six hundred and sixty rods, to the sixth range line of lots—thence east, on said sixth range line about three and a half miles, to the southwest corner of number three, seventh range—thence north, two hundred rods, to a corner—thence east, two hundred forty-seven rods, to a corner—thence north, two hundred forty rods, to the tenth range line—thence east, two hundred twenty rods, to the east line of said township—thence north, on said east line about three miles, to the first mentioned bounds. The part which the said David and William hereby agree to convey being from ten to twelve thousand acres in common and undivided in said tract above described, provided said Todd, Codman, or their assigns, shall pay, or cause to be paid, to the said David and William, the sum of four dollars for each acre, in manner following, to wit: one quarter part cash, and the remainder in three equal annual payments, with interest annually, on good and sufficient security.

Now, if the said Codman and Todd, or their assigns, shall within thirty days perform, or tender to perform, the above conditions, and said David and William shall thereupon cause to be executed and delivered a deed from Mason Greenwood, of the title which William derived from Massachusetts, then this deed shall be void, otherwise to remain in full force.

WILLIAM WESCOTT, [L. S.]
DAVID WESCOTT. [L. S.]

Witness—SOLOMON CROCKETT.

STATE OF MAINE, *Cumberland, ss:*

February 27th, 1837.

Then personally appeared David Wescott, and made solemn oath, that the foregoing answer by him subscribed is true, according to the best of his knowledge and belief, before me,

JOHN L. MEGQUIER,
Justice of the Peace.

At the rules, first Monday of April of the same year, on motion of plaintiff's solicitor, the time in which to file exceptions to the answers of the said James Todd and William B. Gooch is enlarged to the first day of the next May term; and at said May term, on the seventh day thereof, said cause was continued.

At the rules, first Monday of September following, on motion of the plaintiff's solicitor, John S. Tenney of Norridgewock, David

Bronson of Anson, Edward G. Loring and John G. Rogers of Boston, William B. Sewall and John L. Megquier of Portland, Esquires, are respectively appointed commissioners to take the testimony of witnesses on interrogatories and cross interrogatories to be filed in this cause; and, at the October term of the same year, this cause was further continued.

And on the twelfth day of January, A. D. eighteen hundred and thirty-eight, the solicitors for the plaintiff put in and file the following replication, viz:

CIRCUIT COURT OF THE UNITED STATES, *Maine District*.

OTIS DANIELL,
vs.
WILLIAM C. MITCHELL and als.

Plaintiff's general replication.

The replication of Otis Daniell, complainant, to the answers of William C. Mitchell and others, defendants.

This repliant, saving and reserving to himself all and all manner of, advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants for replication thereunto, saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by the said defendants, and that the answers are very uncertain, evasive, and insufficient in the law to be replied unto by the repliant without this, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which this repliant is ready to prove, as this honorable court shall direct, and humbly prays as in his said bill he hath already prayed; by

SPRAGUE and DAVEIS, *Solicitors*.

At the rules, first Monday of February following, on motion of plaintiff's solicitor, it is ordered that the time for executing the commission issued to John S. Tenney, Esquire, be extended to the rule day in April next.

Time enlarged for taking testimony, sixty days.

And at May term of said court of the same year, upon motion of defendant's solicitor, it is ordered by the court that the rule be enlarged to take testimony at any time within sixty days after the answer to cross bill is filed, and publication to pass at the end of said sixty days.

Publication of testimony.

And at an adjournment of said term, holden on the sixth day of August next following, upon motion of plaintiff's solicitor, it was

alleged that the defendants having put in their answers to the plaintiff's bill, the plaintiff has replied thereto: that witnesses have been examined, and that sixty days from the time of plaintiff's filing his answer to the defendants' cross bill will expire on the eighth day of the present month, it was prayed that publication in this cause may pass on said eighth day; which is ordered accordingly.

On the said eighth day of August, pursuant to the order aforesaid, publication was made of the testimony taken in behalf of the plaintiff and of the defendants, under the several commissions issued therefor, in this cause, and which, upon the reading thereof, was as follows, viz:

Plaintiff's Commission.—E. G. Loring and als. Commissioners.

UNITED STATES OF AMERICA, *Maine District, ss.: First Circuit.*

[L. S.] The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in the year of our Lord one thousand eight hundred and thirty-seven.

To Edward G. Loring and John G. Rogers, both of Boston, in the Commonwealth of Massachusetts, Esquire, or to either of them respectively:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of John J. Soren, of Roxbury, Samuel N. Tenney, William M. True, Thomas W. Haskins, and Robert W. Mollineux, all of said Boston, witnesses, to be produced and examined on the part of the plaintiff, to be used in a certain cause now pending in said court, wherein Otis Daniell is plaintiff in equity, and William C. Mitchell and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence; and the same so taken and subscribed to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid next to be holden at Wiscasset, on the second day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto annexed.

Witness the Hon. Roger B. Taney, at Portland, this nineteenth day of September, in the year of our Lord one thousand eight hundred and thirty-seven.

JOHN MUSSEY, *Clerk.*

Plaintiff's Interrogatories.

CIRCUIT COURT OF THE UNITED STATES, *Maine District*, 1837.

OTIS DANIELL,
vs.
WILLIAM C. MITCHELL and als.

Interrogatories, in behalf of the plaintiff, to be proposed to John J. Soren, of Roxbury, county of Norfolk, State of Massachusetts, and Samuel N. Tenney, of Boston, William M. True, of said Boston:

1. Do you know the parties complainant and defendants in the title to these interrogatories named, or either, and which of them, and how long have you known them respectively, or such of them as you do know?

2. Where do you reside, and what is and has been your occupation, and what have been your means of becoming acquainted with new lands or timber lands in Maine?

3. Did or not James Todd, one of the defendants, or Thomas W. Haskins, of Boston, or any other person for them, or either of them, apply to you and the plaintiff, or either of you, to become the purchaser of a part of the land called in the plaintiff's bill the Ford tract? If yea, when, where, what statements, representations, or certificates did they respectively make or present to you and the plaintiff, or either of you? What did they respectively say respecting said land, and what inducements were offered to you and the plaintiff, respectively, to become a purchaser?

4. Did you or not purchase, or agree to purchase, any part of the land in the plaintiff's bill mentioned, and called the Ford tract? If yea, when, where, and of or with whom?

5. If you say you purchased any part of said land, please state how you paid for the same? Was it or not partly in cash and partly by your promissory notes? If yea, how much in cash, and how much by notes? To whom were the same delivered? What was the tenor of the notes? Did said cash and notes pass into the hands of the defendants or any of them, and of whom?

6. If you say you and the plaintiff, or either of you, purchased any part of said tract, state all the transactions and circumstances which led to, attended, and followed such purchase. Was the same purchased as a settling tract, or as a timber tract? Would you or not have purchased the same at any price as a mere settling tract? And what induced you to make the purchase?

7. Were the defendants, or either of them, owners of or interested in any part, and what part, of said tract, on the 15th of June, 1835? If yea, how many and which of the defendants, and in what name, and to what extent, were they interested in said tract?

8. State all that you know relative to any purchase of any part of said tract by the plaintiff, or the plaintiff and others, in Boston, and what caused or induced such purchase to be made?

9. Had you or not any conversation with all or any of the defendants, or did you hear any thing said by them, or either of them, and which, in July, 1835? If yea, when and what was said respecting said tract, or the sale thereof, or any part thereof? State all that you heard fully and particularly.

10. Do you know any other matters or things touching the matters in question in this cause which may tend to the benefit or advantage of the said complainant therein? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

P. SPRAGUE and C. S. DAVEIS,
Solicitors for Plaintiff.

MAINE DISTRICT, *ss.*

CIRCUIT COURT, CLERK'S OFFICE,
August 25, 1837.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

August 28, 1837. Served an attested copy of the foregoing upon William P. Preble, Esquire, solicitor of record for the def'ts, with notice to file cross interrogatories if he should see fit, on or before the eleventh day of September then next, the day on which a commission would issue herein agreeably to the rules.

Attest: J. MUSSEY, *Clerk.*

Plaintiff's Interrogatories.

CIRCUIT COURT OF THE UNITED STATES, *Maine District*, 1837.

OTIS DANIELL,
vs.
WILLIAM C. MITCHELL & als.

Interrogatories in behalf of the plaintiff, to be proposed to Thomas W. Haskins and Robert W. Molineux, both of Boston, in the State of Massachusetts.

1. Do you know the parties complainant and defendants in the title to these interrogatories named, or either, and which of them, and how long have you known them respectively, or such of them as you do know?

2. Did you or not, at any time, have a conversation with the defendant Todd, relative to a tract of land mentioned in the plaintiff's bill, and called the Ford tract? If yea, when and where was the first conversation you so had with him, and what was said? State the same fully and particularly.

3. Did or not the said Todd state that he had a bond or other authority from the owners of said tract, by which he had power to sell the same or some part thereof? If yea, please state when and where

he made such statement? Did he or not show you any bond or written authority? If yea, annex the same, if in your power; otherwise state the contents of the same.

4. Did or not the said Todd request, or in any manner cause, you to aid him in selling any part of said tract? If yea, when and where, under what circumstances, upon what agreement, and for what consideration? State the same fully and particularly; and state also what the said Todd requested you to do, and in what manner he desired you to aid him.

5. Did or not the said Todd make any representations to you respecting the quality and value of said Ford tract, or the quantity and kind of timber thereon, or the facilities for cutting and hauling the same to a stream, and of conveying the same to a market? If yea, what quality, and what kind and descriptions of timber did he represent the said tract to contain, and what means did he say that there were for conveying the same to a market? State fully and particularly.

6. Did or not the said Todd exhibit to you any written certificates or statements respecting said tract, signed, or purporting to be signed, by any person or persons? If yea, look at the exhibits hereunto annexed, marked A, B, C, D, and declare if they are the same; and did he or not put them into your hands, to be shown, or the contents stated, to others?

7, *a.* If you state that said Todd exhibited to you any such certificates or statements, please state whether said Todd made any representations as to the character, standing, skill, judgment, or integrity of the signer or signers of any of them? If yea, what did he say? State fully and particularly.

8. Did you or not, at any time, apply to the plaintiff, or to any person or persons, to become the purchaser or purchasers of any part of said Ford tract? If yea, to whom, and when, and where, did you make such application, and was it or not done as the agent of, or by authority from, said Todd?

9. If, in answer to the last interrogatory, you state that you did make such application to the plaintiff, or others, or had any conversation or negociation, with him, or them, respecting said tract, please state whether or not you had more than one such conversation and negociation, and give a statement and history of the same, fully and particularly, and whether or not you made any representations or statements to the plaintiff, or others, relative to the said Ford tract, and the quantity and kinds of timber thereon, and its quality, and its location, and the facilities for conveying the same to a market.

10. If, in answer to the last interrogatory, you say that you did make any representations or statements to the plaintiff or others, declare what they were, and when and where made; and were they or not made by the authority of said Todd, and in order to aid him in selling any part of said tract, and were they or not sanctioned and confirmed by said Todd? State fully and particularly.

11. Did you or not exhibit to the plaintiff, or others, any written certificates or statements respecting said Ford tract, signed, or purporting to be signed, by any person or persons? If yea, what certificates or statements did you so exhibit, to whom, and when, and where, under what circumstances, and for what purpose? Was it or not done to aid said Todd in selling a part of said tract, or by his request or authority, and did or not said Todd sanction or approve your so exhibiting the same?

12. Did or not the said Todd make any representations or statements to the plaintiff, or others, respecting said Ford tract, and the quantity, kind, and quality of timber standing thereon, and the facilities for cutting and conveying the same to a market? If yea, to whom, when, where, under what circumstances, and what representations did he so make, and for what purpose? State fully and particularly.

13. Did or not the said Todd exhibit to the plaintiff, or others, any certificates or written statements respecting said Ford tract, signed, or purporting to be signed, by any person or persons? If yea, what certificates or statements were so exhibited, to whom, when, where, under what circumstances, and for what purpose? And did he or not make to the plaintiff, or others, any representation or statement as to the character, skill, judgment, or integrity of the signers of said certificate or statements? If yea, what did he say, to whom, when, where, under what circumstances, and for what purpose?

14. Did you or not make any representations to the plaintiff, or others, as to character, skill, judgment, or integrity of signer or signers of any such certificates or statements, as are inquired of in the 11th interrogatory? If yea, what did you say, to whom, when, where, and for what purpose, and was it or not done to aid said Todd, or by his request, or authority?

15. *Was* you or not employed or requested, by said Todd, to aid him in getting up a company or procuring several persons to purchase a part of said tract? If yea, state fully and particularly all that was done and said by said Todd and yourself, to accomplish that purpose.

16. Were or not articles of agreement, in writing, entered into between the said Todd, of the first part, and the plaintiff and others, of the second part, relative to the sale and purchase of a part of said tract? If yea, look at the exhibit hereunto annexed, marked E, and say if it be the same, and whether or not you were present at the time it was executed? Or did or not the said Todd acknowledge the same to be genuine?

17. If you state that any such contract or articles of agreement was made as is inquired of in the last interrogatory, state the means used, and the inducements offered, by said Todd, or his procurement, to cause the plaintiff to enter into the same, and the circumstances attending the making thereof.

18. Did you or not, at any time, proceed from Boston to Maine, for the purpose of going upon and exploring said Ford tract? If

yea, how many times, and when did you first go, by whose procurement, and with what object, what route did you take, who went with you, and why and by whose procurement did they go; when did you reach the Ford tract, or what you supposed to be such; how long did you remain upon it, what exploration did you make, what quantity, kind, and quality of timber did you see upon it; did you make a thorough exploration? If not, why not, and how much did you explore?

19, *a.* If you state that you went upon said tract to explore the same as inquired of in the last interrogatory, please state whether or not the said Todd and one William Wescott accompanied you, and whether or not they, or either of them, and which, procured any other person or persons to accompany you in such exploration. If yea, please state who all the persons were who accompanied you, and in what capacity, and for what purpose they went, and whether or not any representations were made, or means used, to induce you to believe that there was a great quantity of valuable timber then standing upon said tract? If yea, what representations and means were so made and used, and by whom, and under what circumstances?

19, *b*, 1. If you say that the said William Wescott accompanied you in any exploration of said tract, state at whose request; was it or not by the procurement of said Todd? If yea, what reason did the said Todd assign for desiring said Wescott to go with you; and did said Todd and said Wescott, or either of them, say any thing, and what, in relation to said William and David Wescott's having or not having any interest in said Ford tract, or in relation to their being willing or unwilling to sell any interest they had in said tract, or whether or not they meant to keep the same, and for what purpose?

19, *b*, 2, *a.* Did or not said William and David Wescott, or either of them, and which, sell any part of said Ford tract, and how much, and when, to the said parties of the second part in said articles, or to Elias B. Paine, James C. White, Fordyce F. Wheelock, and Dwight Wheelock, or any of them?

19, *b*, 2, *b.* Did or not said William Wescott or said Todd, or either of them, and which, make any representations to you, or in your hearing, respecting the character, skill, and judgment, of one Luther Moore? If yea, how often, when, and what was said, and did or not said Moore accompany you in any exploration of said tract? If yea, when, in what capacity, and by whose procurement?

19, *c.* When you first went to explore said tract, were you or not desirous of making inquiries of persons in Maine relative to said tract, and were or not any means taken to prevent your making further inquiries? If yea, what means, when, and by whom?

19, *d.* Did you or not make a thorough exploration or examination of said tract? If not, why not? Did you or not, at the time

of such exploration, or when you ceased to explore, declare to said Todd, or in his hearing, that you were satisfied, and did not wish any further exploration of said tract?

19, *e.* Did or did not the said William Wescott and the said Todd, or either of them, and which, prevent, dissuade, or discourage you from exploring any part of said tract? If yea, how, in what manner, and what part?

19, *f.* Did or not said Wescott, while exploring said tract, make any statements or representations relative to the timber upon the same, the Austin stream so called, the value of the tract, or as to its being in any part burnt over, or as to its having been lumbered upon, or timber having ever been taken therefrom?

19, *g.* Did or not said Todd state what was the value of said land, and what would be the expense of cutting and hauling the timber therefrom, and conveying the same to a market? If yea, what did he say, to whom, and how often?

19, *h.* Did or not the said Todd, Thomas Chase, William Wescott, and Moore, or either of them, and which, sign and deliver to you any certificate or certificates respecting said tract, and the quantity of timber thereon? If yea, when and where, and look upon the exhibits hereunto annexed, marked C and D, and say if they are the same?

19, *i.* If you say that certificates signed by said Todd, Wescott, and Moore, or either of them, were delivered to you, state when and for what purpose; and was it or not for the purpose of influencing your judgment and report in relation to said tract, and for the purpose of the same being exhibited by you to the plaintiff, or to the parties of the second part in said articles of agreement, in order to induce him or them to purchase a part of said tract; and if for any other purpose, what other?

19, *k.* Were you or not authorized by the plaintiff or others, and whom, to purchase, or make a contract to purchase, for him or them any part of said tract; or did you or not represent to said Todd, or in his hearing, that you *was* so authorized; and did you or not make, or undertake to make, as such agent, any such purchase or contract?

20. If you state that you went upon said tract, as above inquired of, please state what opinion and estimate you formed of quantity, kind, and quality, of the timber thereon, and what caused or induced you to form such an opinion and estimate. Make a full and particular statement of all that took place in said exploration, and whether or no you had ever before explored or been conversant with new or timber lands, and what experience you had had in that business, and what had been your previous occupation and place of abode.

21. Did you or not make a report or statement, to the plaintiff and others, of your opinion and estimate of the quantity, kind, and quality, of the timber upon said tract, and the facilities for cutting

and conveying the same to a market? If yea, what report or statement did you so make—when, where, and to whom; and was it written or verbal? And if such report or statement was verbal, state fully what it was, and what caused or induced you to make such report.

22. Did the plaintiff become the purchaser of any part of said Ford tract? If yea, of how much, at what price, and upon what terms and conditions? How much did he pay therefor, to whom, and in what manner? Did he or not make payment partly by cash and partly by his own promissory notes? If yea, how much of each?

23, *a*. If you state that the plaintiff did pay, as inquired of in the last interrogatory, state whether or not the said cash and notes were delivered to the said Todd. And if yea, when and where, and what disposition did the said Todd make of the same; and did the same, or any part thereof, and what part, pass into the hands of the other defendants, or any of them, and which? And if yea, in what manner, by what means, for what consideration, and for what purpose?

23, *b*. Were you a purchaser, either directly or indirectly, of any part of said Ford tract? If yea, of how much, at what price, how did you pay therefor, what induced you to become a purchaser? Are you still interested in said tract? If not, how have you disposed of your interest? Have you ever been interested in this suit? If yea, have you ceased to be so, and in what manner? Please annex all instruments of discharge or release connected with this inquiry.

23, *c*. Did or not the plaintiff know, or was he informed, or had he any, and what, reason to believe that you were to be paid by said Todd for procuring purchasers of a part of said tract, or for getting up a company for the purpose of making such purchase?

23, *d*. Did or did not you and the plaintiff, or either of you, know that the said Todd had no personal knowledge of said tract, or did he so declare to both, or either of you; or did he state the grounds and reasons, and what grounds or reasons, for the representations made by him respecting the timber upon said tract?

23, *e*. If you state that said Todd made any representations, or exhibited any certificate, respecting the quantity and quality of the timber upon said tract, to you or the plaintiff, or both, state whether the same were made absolutely and positively as facts to be relied upon, or only as mere matters of opinion, estimate, judgment, and inference, of the correctness of which the purchasers were to inform themselves and be their own judges. Declare the truth and state to whom, and how often, such declarations were so made, and such certificates exhibited. And were or not such declarations made, and certificates exhibited, for the purpose of inducing the plaintiff to purchase a part of said tract, or merely to induce the plaintiff to take measures to satisfy himself as to the quantity and quality of

timber thereon, and the value thereof; and would you or not have formed the opinion and estimate you did, of the quantity, quality, and value, of said timber; or would you or not have advised the plaintiff to purchase, or been willing yourself to purchase, a part of said tract, had it not been for the representations and certificates made and exhibited by said Todd? State what effect they had, and were intended by the said Todd and the other defendants to have, upon you and the plaintiff. Did or not the plaintiff actually purchase a part of said tract, by reason of the representations and certificates made and exhibited to him by said Todd?

24. Were or not the defendants, or either of them, and which, owners of, or interested in, said Ford tract, or in money or notes given therefor, or other proceeds thereof? If yea, state how or in what manner and proportions they were so interested in said tract, money, or proceeds; and state, also, how you derived your knowledge upon this subject.

25. Was there or not a written agreement made between the defendants, or some of them, and which, relative to any cash or notes received, or to be received, for said tract, or other proceeds thereof? If yea, please state when such agreement was made, and who were parties thereto, and the contents thereof; and, if in your power, annex said agreement, or a copy thereof, to your answer.

26. Did you or not ever explore or go upon said Ford tract more than once? If yea, how many times, and when, and by whose procurement, and for what purpose? Were or not the defendants, or any of them, notified of your purpose or invited to join, or did they agree to join, in exploring said tract, and did they, or any of them, do so? And if not, why not, and what did they, or either of them, do in relation to such exploration?

27. If you state that you went a second, or a second and third time upon said tract, state who went with you, where you went, what you saw, and whether or not you found the same timber that you saw at the time of your first exploration, or any part of it, and what opinion and estimate you formed of the quantity, quality, and kind, of timber then standing upon said tract, and the means by which you arrived at such opinion or estimate.

28. Did you or not know in your first and subsequent explorations, or either of them, the boundaries or lines of said tract? State your means of knowledge upon this subject at each time.

29, *a*. If you made more than one exploration of said tract, did you find the same quality and quantity of timber thereon in your subsequent explorations, that you saw and believed to be thereon in the first? If not, what was the difference, and what disproportion was there?

29, *b*. Did or not said Todd, William Wescott, and Moore, or either of them, and which, in exploring said tract, so guide or conduct you as to show and conduct you through the same berths or glades of pine timber several times, as and for distinct and different

glades, berths, and trees? If yea, by what means have you ascertained, and how do you now know the fact?

29, c. Did or not the said Todd, William Wescott, and Moore, or either of them, and which, so guide or conduct you in exploring said tract, as to exhibit to you great quantities of good pine timber as standing and being upon said tract, and which you then believed and estimated to be upon the same, but which in fact were not standing on said tract, but on other lands adjacent thereto? If yea, by what means have you ascertained, or how do you know, that such was the case?

30. If you state that you made more than one exploration of said tract, and if you further state that the opinions or estimates which you formed of the quantity, quality, and kind, of timber standing upon said tract, in said several explorations, were different, please state the cause of such difference, and whether or not there were any facts or circumstances which caused or account for such difference. If yea, what those facts and circumstances were?

31. If you state that you have ever been upon, or explored, or examined said tract, state your present opinion, knowledge, and belief, of or as to the quantity, kind, and quality, of timber that was standing upon said tract at the time you first went upon it, and the means and reasons of and for such knowledge, opinion, or belief.

31, *a*. What is the present value of said tract per acre, and in what does the value consist; and if you state that the plaintiff or yourself purchased any part of said tract, was it purchased as a timber tract, and would you or the plaintiff have purchased any part of it, at any price, as a mere settling tract; and had or not the plaintiff ever before purchased or sold, or made contracts respecting new or timber lands, or had he any knowledge thereof? Where has been his place of residence, and what his business or occupation; and has he or not ever seen, or been within many miles of, the said Ford tract?

32. Had you or not any conversation with all or any of the defendants, or did you hear any thing said by them, or either of them, and which, after the 29th of June, 1835? If yea, when, and what was said respecting said tract, or the sale thereof, or of any part thereof? State all that you heard fully and particularly.

33. Do you know any other matters or things touching the matters in question in this cause, which may tend to the benefit or advantage of the said complainant therein? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

P. SPRAGUE and C. S. DAVEIS,
Solicitors for Plaintiff.

MAINE DISTRICT, *ss.*

CIRCUIT COURT, CLERK'S OFFICE,
August 25, 1837.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

August 28, 1837. Served an attested copy of the foregoing upon William P. Preble, Esquire, solicitor of record for the defendants, with notice to file cross interrogatories if he should see fit, on or before the eleventh day of September then next, the day on which a commission would issue herein agreeably to the rules.

Attest: J. MUSSEY, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS:

By his excellency Edward Everett, Governor, and commander-
[L. S.] in-chief in and over said Commonwealth, to all whom it may concern:

EDWARD EVERETT.

Know ye, that Edward G. Loring, esquire, is now, and has been for eight months last past, a justice of the peace for the county of Suffolk, in the said Commonwealth, duly constituted and commissioned, and that to his acts and attestations, as such, full faith and credit are, and ought to be, given in and out of court.

In testimony whereof, I have caused the public seal of the Commonwealth to be hereunto affixed, this nineteenth day of February, A. D. 1838, and in the sixty-second year of the Independence of the United States of America.

By his excellency the Governor:

JOHN P. BIGELOW,
Secretary of the Commonwealth.

Testimony of T. W. Haskins.

Answers of Thomas W. Haskins, John J. Soren, William M. True, and Robert W. Molineux, all of said Boston, witnesses produced by the plaintiff in the cause specified by the commission hereto prefixed; the execution of which will appear by reference to the sheets and schedules annexed to this return. The said Samuel N. Tenney, not being within the Commonwealth, was not examined.

EDWARD G. LORING,
Commissioner.

Answers of said Thomas W. Haskins to the interrogatories to said commission annexed, and to him proposed.

To the first he says:

I know the complainant, and all the defendants in this suit, except Dr. Gooch. I have known Otis Daniell about from twelve to fifteen years; William C. Mitchell about two years, and his brother Tristram about the same time; my knowledge of them commenced in dealings relating to the land to which this suit relates. I have known Israel Waterhouse and James Todd about twelve years. I have known Erastus Hayes about five years. David and William Wescott about two years; my knowledge of them commenced in dealings relative to said land. Mr. Warren I have known less than two years. I do not recollect that there are any other parties.

To the second he says:

In the month of June, in the year eighteen hundred and thirty-five, Mr. Todd came into my store, number 7, in Union street, in said Boston, and informed me he had come up from Portland to sell some eastern lands for which he held a bond. Many applications had been made to me by other people to buy eastern lands, and I was very busy, and for these reasons I declined hearing any thing at first about Mr. Todd's proposals; but as I had known Mr. Todd a great many years, and had great confidence in his integrity, and considered I could put perfect confidence in whatever he might say or should tell me, I concluded to hear what he had to say. Mr. Todd then said, the land he had to sell offered a great bargain, and used the expression, "there was no mistake," and several such expressions about it. He said he had ten sixteenths of a sixteen thousand acre lot, situated on the east side of Kennebec river, in Somerset county, within four or five miles of the main river, and on what was called the Austin stream. He said the lot contained from fifty to sixty millions of feet of good pine timber, and that about two thousand acres of it were well covered with good cedar suitable for sawing, and that the land itself was worth from two to three dollars per acre for settling after the timber was taken off. He then said the pine timber could be got off for three dollars per thousand, and that the average value of what it could be sold for at the place where it would cost us three dollars, would be from seven dollars to seven dollars and a half per thousand; he said the cedar that could be got out would sell from thirty to forty dollars per thousand of boards, but what it would cost to get the cedar out he did not know any thing about. He said, particularly, that this cedar enhanced the value of the land considerably, but that he did not consider it in estimating the value of the land. He then took out the plan hereto annexed, marked Z, E, G, L, by the commissioner, and showed me that the Austin stream went through one part of it, and represented that stream as sufficiently large to run the logs in any common freshet into the main river; and he showed two smaller streams running from what was called the L part, which, with a little expense in clearing, could be made sufficient to run the logs into the main Austin stream. He said that this land had never been logged upon but two winters in any part, and in those two winters the loggers had not been allowed to enter into the main parts of the timber, but only into what is called *the scattering timber*, so that the main berths had not been entered at all, and that the L part had never been cut on. He said the loggers had previously offered to go into the main berths, and get the pine timber out for one dollar and an half per thousand; that supplies for the loggers could be got on there at a reduced rate, in consequence of its being so near to settled towns; that hay had been delivered there for ten dollars per ton, when it cost thirty dollars per ton delivered up at what is called the Forks; and pork, and other articles of provision, could be de-

livered there at much less rate than at other lots further up the river; so that he felt certain he offered a great bargain, and a great inducement to capitalists to invest their money well. He said he would sell it all at five dollars an acre, one quarter cash, and the remainder in one, two, and three years, with a mortgage on the premises, though he was confident, he said, he could just as well sell it for seven dollars, or seven dollars and a half per acre if he had a little more time; and he added it would then be cheap enough, as other lands were selling. He said his bond was for four dollars and a half, so that he only made (at five dollars) half a dollar an acre, but that his bond expired that week, (and this conversation was on Tuesday,) so that he must sell directly or he should lose his opportunity; and that before he came away from Portland the owners were desirous of getting up the bond from him, as they thought they could sell the land for more; that two or three of the sixteenths which he did not control were owned by operators, the Messrs. Wescott, who were not willing to sell at any price, because they knew it was a good timber tract, and preferred keeping it for operating, and would like to join the purchasers, whoever they might be, in getting the timber off. He said the whole tract was sixteen thousand acres, undivided. I asked him how it happened this tract had not been in the market before. He said it was owing to the way in which it had been owned by many persons, heirs, and others, persons who did not care about selling, and who were so scattered it was difficult to get the control of it; that he obtained it through the influence of some friends, and that it was several months since they undertook to collect it. He said if I did not wish to purchase myself, I might recommend it to my friends with confidence; and he asked me to undertake to dispose of it, and said he would pay me for my trouble three hundred dollars, provided I would procure purchasers for the ten thousand acres of his land. I am not certain, on reflection, whether his offer was two hundred and fifty or three hundred dollars. I subsequently agreed to do it for two hundred dollars; that is, I was to make the effort to obtain purchasers, and was to be paid two hundred dollars if I succeeded. Before I undertook this he delivered to me, with the plan mentioned above, many certificates as to the value of the land, and quality, and quantity of timber, and the facilities of getting it off. After I undertook, he said I must recollect that he did not make his representations from personal knowledge of the land, as he had never been on to it, but that he had, and I might have, perfect confidence in the persons from whom he had received his information; that they were not land jockeys or speculators, (or some such expressions he made use of,) but some of the most respectable men in Portland. This is, so far as I can recollect, the sum and substance of the first conversation with Mr. Todd.

To the third he says:

Mr. Todd did state that he had a bond from the owners of ten undivided sixteenths of said tract, by which he had authority to sell

the said ten undivided sixteenths, containing ten thousand acres, or thereabouts; the time and place in which Mr. Todd made said statement I have already stated. Mr. Todd did not show me the bond, or any such authority. As I have it not, I cannot annex it; and as I never saw it, I cannot state its contents from any personal knowledge. But Mr. Todd has, since the conversation above stated, told me that the bond he held, made to him by said owners, was for four dollars an acre; that when those owners were desirous of getting the bond up from him, he agreed with them to give them half he should make of all over four dollars; so that when he offered the land for five dollars, he made for himself only half a dollar an acre, so that the bond and the agreement made the contract by the owners with him for four and a half dollars per acre.

To the fourth he says:

I do not know that I can answer this question more fully than I have in my answer to the second interrogatory. Mr. Todd, in the conversation detailed in my answer to the second interrogatory, requested me to aid him (if I did not wish to purchase his tract myself) in procuring purchasers among my friends, and it was agreed between him and me, that if I succeeded he was to pay me two hundred dollars; and he requested me, after I had taken the papers in my hand to start on my undertaking, to be particular to represent to my friends the good character of the certificates, and the facility with which the timber could be got from the land.

To the fifth he says:

I cannot make any further answer to this interrogatory than is contained in my answer to the second interrogatory, except that Mr. Todd, on the same day of the first conversation, and after I had seen some friends and got them to sign, stated to me that but little timber had been got out from this tract, and that what had been was considered of the first quality; and that the Austin stream was sufficient, in any common freshet, to get out the timber; and that by building one more dam, and repairing two dams which needed repairs, (of which expense the Saco company would pay one-third, and the Bald Mountain company one-third, leaving one third to be paid by the owners of this tract,) the timber might be got out at any time, without a freshet.

To the sixth he says:

At the time of the first conversation, stated in my answer to the second interrogatory, Mr. Todd put into my hands the certificates specified in the question marked A. B., with the intention that they should be shown by me to my friends to whom I applied to purchase, and I did so show them. The certificates marked C and D were not given to me by Mr. Todd, but procured by me afterwards. When Mr. Todd gave me the certificates referred to as marked A and B, he gave me other certificates, also, for the same purpose, which are not now exhibited to me.

To the seventh he answers:

After Mr. Todd had stated to me that the certificates were given by men of respectability, he said that Mr. Jonas Brown, who signed the certificate exhibited to me and marked A, might be depended on as a judge of the quantity and value of timber, and at the time Mr. Todd produced one or two certificates as to the character of Mr. Brown; these certificates were from persons whom I knew by reputation at the time, though I do not now remember their names. Mr. Todd represented Mr. William Wescott, who signs the same certificate marked A, to be a man of respectability and good standing, and that he was one of the marshals at Portland; and Mr. Todd said this Mr. Wescott was acquainted with the land in question, and had been on it, and had been concerned in what logging there had been on it. Mr. Todd also stated that Mr. John Hill, who signed the certificate exhibited marked B, was a man of high standing, and would not recommend a tract of land he did not know to be good.

To the eighth he answers and says:

I applied to the plaintiff and many others to become the purchasers of the said Ford tract, viz. to Otis Daniell, Josiah Daniel, John J. Soren, J. T. Champney, Daniel Sigourney, Messrs. Molineux & Messinger, Peter Wainwright, Jr., Jonathan A. Richards, who became purchasers on my representation; afterwards, when Mr. Wainwright wished to withdraw, I applied to Mr. Barnum Field, who took Mr. Wainwright's place. I applied to many others, who did not become purchasers, whose names I do not now remember. These applications to those who did and those who did not purchase were made at the places of business of the persons applied to, in Boston, and on the day and the day after the first conversation with Mr. Todd, and at the suggestion of Mr. Todd, and under the agreement stated above to have been made by him with me.

To the ninth he answers and says.

With the plaintiff, Otis Daniel, I had several conversations; and I had more than one conversation with Molineux & Messinger, and John J. Soren, and, it may be, with others of those named as purchasers in the last interrogatory, but I don't recollect about it. With all the purchasers I had at least one conversation. I first saw Mr. Otis Daniell, and, in his store, I told him that I thought I could offer him a good investment in this tract *on* land, on Mr. Todd's representations. I then stated to him the representations of Mr. Todd, detailed in my answer to the second interrogatory, and the character given to me of the certificates, and I showed him the map. Mr. Daniell seemed inclined to listen to me, and said he would take hold if his brother, Josiah Daniell, would. I then went to my own store, where Mr. Todd had remained; as I think, I told him what had passed with Otis Daniell, and said I would go and see Josiah Daniels; and I went. I saw Josiah Daniels, and made the same statements to him. When I showed him the certificates he said, I think, he wouldn't give a farthing for a bushel of certificates, un-

less I knew Mr. Todd to be a man of integrity. I am sure he made and repeated remarks to this effect; and some one made this remark, and I think it was Mr. Josiah Daniels. I told him I had known Mr. Todd to be a man of integrity a great while; that he was a man in whom I had the greatest confidence. Mr. Josiah Daniels did'nt examine the certificates; he said he relied on me and my knowledge of Mr. Todd. Mr. Josiah Daniels then consented to join, if his brother, Otis Daniels, and Mr. Sigourney and Mr. Wainwright would join. This was the end of my first conversation with Mr. Josiah Daniels, about the land. I then went to the Washington Bank, and there I saw Mr. Sigourney, Mr. Soren, Mr. Richards, and Mr. Champney, and had a conversation with them altogether. I exhibited the certificates and the map to them, and stated to them the same in substance as I had stated to the Messrs. Daniels, as to the quality and quantity of the timber, and the facilities of getting it out, and the character of the certificates, and the signers of them, and as to the character of Mr. Todd; and I also stated to them that Mr. Todd said he was so confident of the quantity of the timber, and that it would overrun the estimate, that he would guaranty that there was at least sixty millions of pine timber on the whole Ford tract. My conversation, at this time, at the bank, was about half an hour, and the gentlemen asked many questions, and they finally agreed each to take an interest. I then went to Mr. Peter Wainwright, at the Savings Bank; I then began to make the same statements to him, and before I got through he said he should rely upon me, and on my knowledge of the person from whom I had the certificates, and on the names of the persons who had already agreed to take an interest; these names he saw on the paper which I showed him, and which had been signed by the Messrs. Daniels, Sigourney, Richards, Champney, and Soren, and Molineux, and Messinger. This paper certified that they would take an interest in the purchase. On the way from the Washington Bank to the Savings Bank I had called at the store of Molineux and Messinger, and seen both of them; and to them I had made, as near as possible, the same statements I had made at the Washington Bank, and they thereon agreed to take an interest, and had signed the paper referred to, as shown to Mr. Wainwright; these gentlemen named, altogether, took up all the purchase. In the afternoon of the same day Mr. Wainwright called at my store, and told me that he wished to withdraw, not from any thing he had heard or any doubts he entertained of the goodness of the investment, but from the inconvenience of meeting the cash payments that would be required. I then went in pursuit of another man to take his place. I went into the street, and accidentally met Mr. Barnum Field in the street, at the corner of Court and State street; I proposed to him to take an interest in some eastern lands; he at first declined; I then told him I had originally got the whole purchase taken up; that I was sorry I had not seen him before, as I knew him so well I should have liked to

have had him concerned, as I thought so well of the investment. I considered it a favor to offer any one an opportunity to become concerned in it. I then stated that Mr. Peter Wainwright had taken an interest, but now wished to withdraw; and I stated the reason why he did so. I then stated to him the names of the persons who had agreed to be concerned in the investment, and Mr. Field had such confidence in them, and such knowledge of them, that, on that confidence and knowledge, without hearing a full statement from me of the quantity and quality of timber, &c., and the value of the tract, he agreed to take Mr. Wainwright's place, and take his interest in the purchase. I also stated to Mr. Field that a bond was about to be drawn, whereby Mr. Todd was to guaranty that sixty millions of pine timber should be found on the land, and that I wanted him to come and sign it; and he went with me to Mr. Sewell's office and signed it. I also stated to Mr. Field that I was to go down to the land, as agent for the purchasers, to see if there was on the land the quantity of timber specified in the bond. I have stated all the conversations which I now recollect to have had with the plaintiffs or purchasers, previous to their agreeing to purchase.

To the tenth he says:

I have already stated that I made representations, and to whom, and when, and where they were made, and what they were. These representations were made by the authority of said Todd, and to aid him in making the sale he desired to make, and were subsequently sanctioned by said Todd, and he added that he would go with me on to the said land and show it.

To the eleventh he says:

I exhibited the certificates above referred to by me, as exhibited to me by the commissioner, and the other certificates I have referred, as all of them given to me by Mr. Todd, to the persons, and at the times and places I stated above, and I so exhibited them to induce the persons applied to to purchase the land, and for this purpose they were delivered to me by Mr. Todd; they were so exhibited at his request, and by his authority, and he subsequently sanctioned and approved the use I had made of the certificates, and repeated his declaration as to the character of the certificates, that they were better than the usual class of certificates, and might be relied upon.

To the twelfth he says: During the two or three days in which we were engaged in getting purchasers, Mr. Todd and myself were a great deal together; on one occasion we met Mr. Soren, whether at my store or in the street, I can't say. Mr. Soren questioned Mr. Todd as to the timber on the tract, and Mr. Todd said, that one of the Mr. Wescotts had been on the land, engaged in logging, two winters at least, and knew all about it, and that from all he could learn from Mr. Wescott and others, he (Mr. Todd) was confident the timber in quantity would overrun the estimate he had made. Mr. Todd referred to the certificates of Mr. Hill and of

Mr. Foxcroft, and others, as showing the quality of the timber; and Mr. Todd added, that by all who had seen or spoken of the timber, it was considered of the very first quality. Mr. Todd said, that the Austin stream would be sufficient in any common freshet to get the timber out with, and that by building one dam, and repairing the others referred to, the timber could be got down without a freshet; this he repeated many times. I cannot fix the day of this conversation, but it was before Mr. Soren agreed to purchase. While Mr. Todd was here, and the day after his arrival I think, I carried him to Mr. Otis Daniels' store, and introduced him to Mr. Daniels. Mr. Daniels asked him what he knew about the land, and if he thought it as good as represented. Mr. Todd said he had no personal knowledge of the land, but as he had told Mr. Haskins (meaning me) he had long known the persons from whom he had obtained the certificates, and had no doubt the land would hold out in every respect. I at this time left Mr. Daniels' store, and returned again just as he and Mr. Todd had finished talking—I heard no more that I remember. I also introduced Mr. Todd to Mr. Josiah Daniels at his store. Mr. Josiah Daniels asked (almost in the very words his brother had used) of Mr. Todd, what he knew of this land. Mr. Todd said he had never been on to the land, and did not know it personally, but that he had perfect confidence in the representations which had been made. Mr. Todd said, the timber was estimated at sixty millions in the proposals, but he had no doubt there would be nearer a hundred millions. This I heard Mr. Todd state to almost every one I heard him converse with. I heard him state it to Mr. Tenney in our store. Much conversation passed between Mr. Josiah Daniels and Mr. Todd, to which I did not attend at the time, and do not now remember. When I went with Mr. Field to Mr. Sewall's office to have Mr. Field sign the bond, we met Mr. Todd there, and I introduced him to Mr. Field, and then left them; they were, I think, conversing about the land when I left them. Mr. Todd's purpose in making these representations was to effect a sale of the land.

To the thirteenth he says:

Mr. Todd gave me the certificates to which I have already referred, and I do not know that he personally exhibited them to any one else. In the conversations above referred to between Mr. Todd and others in my presence, the certificates were in my possession, and I don't remember that they were exhibited; they were, as I have stated, referred to, and I have already stated all that I recollect Mr. Todd then said about them.

To the fourteenth he says:

I have already answered this question as fully as I can. I showed the certificates I have above described to each of the purchasers, and stated to them, as I have set forth at large before, all Mr. Todd had told me, and this I did at Mr. Todd's request, and by his authority.

To the fifteenth he says:

I have already complied with this interrogatory, and answered it as fully as I can.

To the sixteenth he says:

The instrument marked E, referred to in the question, and now marked E, G, L, by the commissioner, is the very agreement made relative to the purchase and sale of the land—I saw it signed by all. In attestation of whose signatures my own is set down as a witness. I carried it round to get it signed by some of the purchasers, and to some of them Mr. Todd went with me. He was with me when Molineux and Messinger signed, and he then and before and since and at all times, so far as I know, treated it, and spoke of it as a genuine instrument, and his signature to it is genuine. I saw him sign it, and know his handwriting.

To the seventeenth he says:

I have already stated every thing I can state in answer to this question.

To the eighteenth he says:

By the agreement between Mr. Todd and the purchasers, they were to have so many days before the price was paid, and the deed given, to ascertain as far as possible the truth of the representations. Mr. Todd said, (we) the owners, were satisfied of the truth of the representations and certificates, and were ready to sell; he said he would guaranty to the purchasers they should have the time agreed on, but that the purchasers, if they found the land to be as represented, must pay their own expenses in ascertaining it, and that if they found the land otherwise than represented, that then he would pay all the expenses of one agent, and such explorers as were specified in the bond, and that the purchasers should not be held to take or pay for the land; the understanding was, that Mr. Todd's object here was to effect a sale of the land, and not to induce the plaintiffs to go and see the land; and Mr. Todd was very particular in his inquiries of me about the ability of the purchasers to take and pay for the land, and as to their character and sincerity in entering into the negociation. The purchasers appointed me their agent to go and view the land. I persuaded Mr. Molineux, one of the purchasers, to go with me, and he and I and Mr. Todd left Boston together to go to the land. We arrived in Portland early Friday morning, and found the stage would leave immediately after breakfast. I had been requested by Mr. Otis Daniels to inquire at Portland into the accuracy of Mr. Todd's representation, that the Wescotts, who owned the other portion of the land, were unwilling to sell, and if I found they would sell, to ascertain at what price. I found the Wescotts lived at a part of the town distant from its centre, and that I had not more than time to get my breakfast, and get ready to start in the stage. I did not wish to lose the stage, as it would delay us into the next week; whereas, if we then took the stage we could get to the land Saturday evening. I therefore did not execute Mr. Daniels request, but concluded to go

in the stage. Mr. Todd was to go with us in the stage to show us the land, and when the stage was ready, and I went to get in with Mr. Molineux, Mr. Todd was there, and introduced us to Mr. William Wescott, who Mr. Todd said would accompany us to the land, and show it to us. Mr. Todd had not intimated any thing of the sort to us before. I immediately objected to Mr. Wescott's accompanying us, and said, I did not know how the purchasers would like to have him go with us, or something like that. Mr. Todd said, he had not thought there could be any objection to Mr. Wescott's going; that he did not wish to go, but he (Mr. Todd) had urged him to go because he was accustomed to go into the woods, and was acquainted with this tract, having logged on it; that he could therefore point out the land, and take care of us who were not accustomed to go into the woods. Mr. Todd said more of the same kind to satisfy me, and being convinced from what Mr. Todd said, that he thought Mr. Wescott could have no interest to deceive us, I consented to his going. Nothing important occurred till we arrived at Bingham, on Saturday evening, when I immediately went to Mr. Fletcher the postmaster, to whom I had been recommended by a friend in Augusta, to inquire for explorers. Mr. Fletcher recommended Mr. Moses Chamberlain, and if I could not get him, Mr. Thomas Chase. Mr. Chamberlain had gone a journey. When I returned to the tavern, Mr. Wescott asked me if I had got an explorer. I told him, that Mr. Fletcher had recommended Mr. Chamberlain and Mr. Chase, and that Mr. Chamberlain was gone away. Mr. Luther Moore was there, who immediately said he knew Mr. Chase, and knew where he lived, and described it to Mr. Wescott. Mr. Wescott then said, he could send over across the river by Mr. Moore to Mr. Chase to have him come over to us, which I consented to. Mr. Wescott then said, we should want a pilot and cook, and said he knew Mr. Moore, that he was a good man for us; that he knew the woods, was a good pilot, could cook as well as any body, and would carry all the baggage for us. I said I had not known before that it was necessary for us to have a cook and pilot, besides the explorer. Mr. Todd and Mr. Wescott both said it was necessary, and Mr. Wescott said, as he knew Mr. Moore, and had been with him before, he would attend to getting the provisions ready for us, and making the necessary arrangements, and I consented to leave all that to him, and that he should be a sort of commissary for the journey.

The next day being Sabbath, I did nothing, but attended meeting all day (there being no meeting-house) in the school-house; and as there was no minister I officiated, addressed the Sunday school, and read the sermons and prayers. Mr. Todd went with us in the morning, but was sick in the afternoon. On Monday morning Mr. Chase came over, and I asked him if he was a judge of the quality of timber. He said he had worked in logging a number of years, (stating the number, which I don't now remem-

ber,) and that he considered himself a good judge of the quality of timber; that as to the quantity, he could count, and supposed he could tell as well as any body. I asked him if he could tell the location of the land. He said he had never logged on it, but that he had crossed the lot, and thought he could tell when he was on it; and that Mr. Moore and Mr. Wescott both knew the land, so that there could be no danger. I then engaged him to go. Mr. Wescott having arranged with the cook and pilot as to what he should have, and what provisions should be taken, and got all things ready, we started, Monday about noon, on foot for the land. *They* were six of us: Mr. Todd, Mr. Wescott, Mr. Molineux, Mr. Chase, Mr. Moore, and myself. Mr. Wescott now took the lead in showing us the land, and the way to it. He said to the pilot that it would be best to go over the Babbit Ridge, as we there could see the land: the pilot assented. When we got on to the Babbit Ridge we sat down, and taking out the plan, Mr. Wescott, Mr. Chase, and Moore showed the location of the land, exhibiting the timber, &c., on what was called the L part, and agreed which course we should take to go on to it. From the Ridge the land looked very well. Mr. Wescott had previously directed us what road to take to get at the land from Augusta, and on his representing that road as the best, we had come the road he advised, instead of taking the road through Brighton, as we might otherwise have done. Mr. Moore, the pilot, then undertook to lead us on to the land, which we supposed would be about one or two hours' travel. It was a rainy afternoon, and we had to depend wholly on the pilot, who led us a very zigzag route. I very soon felt I was entirely lost, and Mr. Molineux told the pilot that he (the pilot) was lost, and didn't know where he was; and then considerable altercation or dispute occurred between Mr. Wescott, and Mr. Chase, and Mr. Moore. We continued travelling till about night, when all seemed to agree we were on the land, and we encamped, as we then supposed, by Mr. Wescott's information, on the L part, at the spot marked on the map, (referred to and now before me,) with the letter A, and had looked at one berth of timber which Mr. Wescott said was on the Ford tract. Mr. Wescott, and Mr. Chase, and myself, each climbed a tree to count. Mr. Wescott made two hundred, Mr. Chase made one hundred and sixty, I could not make but one hundred and twenty; and here Mr. Wescott expressed himself very freely, and with many repetitions, as agreeably disappointed in the appearance of the tract, he never having explored this part of the tract. We then examined the trees, to ascertain the quantity of timber; and Mr. Wescott, and Mr. Chase, and myself made our estimates. Theirs were larger than mine: I knew nothing or little about it, and I presumed they did know all about it; and their average finally agreed on was about sixteen hundred feet to a tree, and the quality sound and good—very few, if any, cacksey trees we *seen*, as we supposed; Mr. Chase and Mr. Wescott both having

taken pains to describe to me a cacksey tree, so that I might know them. They both described to me the marks of a conksey tree as consisting in dead branches at the top, and a bunch in or bulges on the tree, as big as a fist or larger.

After camping all night, the first thing we did the next day was to look for a small stream, which Mr. Wescott informed us was on the west side of the L, nearest to the town of Moscow, and which had been represented as sufficient to run the logs down. We found the stream, and it did appear sufficient to us all, after a little clearing, to run the logs. We found near the stream one berth of timber of about fifty trees, of an average size of from twelve to fourteen hundred, and then followed the stream and came to a berth, where we climbed again and counted. I made about two hundred, as near as I remember; Mr. Chase made two hundred and forty, and Mr. Wescott made it two hundred and sixty-nine. Then we travelled along, and adjoining this berth we measured off what we judged one acre, and counted sixteen trees on it of the average size of twelve hundred. We then travelled on across a hard wood ridge, over to the other side of the L, as Mr. Wescott informed us, and, as we supposed, near to what is called Ford town. In about one mile's travel, we counted what we supposed would average from eight to ten trees to the acre; and then we camped for the night at, as Mr. Wescott informed us, and as we supposed, *at* the spot marked B on said plan. Our route had been, as we supposed, up, following the stream to nearly the upper end of the land, when we crossed over and descended to the spot marked B. During this day's route our course lay, some part of the time, through very thick cedar swamps, which, with the thickness of the flies, &c., made it very laborious, and I gave out twice. At one time we struck upon what appeared to be an old road. I proposed to Mr. Wescott and Mr. Chase to travel a little while in this road: they said it would not do, as it would lead us directly out to Ford town. I of course submitted to them, and we struck again into the woods. The next day we looked for the eastern line of the L part, and found it, as we supposed; after there had been considerable dispute between Mr. Wescott, and the pilot, and Mr. Chase, it was finally agreed, and Mr. Wescott assured me it was the line. Mr. Wescott then showed me a glade of timber, which Mr. Wescott assured me was on the tract, and which was the best berth of timber we had seen. There we climbed and counted: Mr. Chase made two hundred; Mr. Wescott made over two hundred, exactly how many I don't remember; I made one hundred and seventy-five. The average size was, after more particular calculation than at any other place, agreed to twenty-five hundred feet to a tree. The quality was very good, and the whole of this day we only saw one conksey tree. Here Mr. Wescott was very full in his repeated declarations that he was agreeably disappointed in the quantity and quality of the timber, saying the land ought not to be sold under ten dol-

lars an acre; that it would bring ten dollars as quick as any thing; that he was confident there was a hundred million of timber on the land; that it would overrun the estimate, and overrun the estimate he had made before he had explored this part; that he should not be afraid to guaranty it would overrun a hundred million; and that he had no idea before there was so much timber on the L, and asked Mr. Chase several times if he had any idea there was so much timber there, and several such questions; and such declarations Mr. Wescott repeated many times during the day.

When I found Mr. Wescott thought so well of the land, I concluded to sound him according to Mr. Daniel's request about selling the interest that belonged to him and his brothers. I supposed then he had no interest in the part we were buying; so on the second or third day, I asked Mr. Wescott if he would sell; he said he did not think they would sell at any price; that they had not known the tract was so good; that they knew it was good, and if they sold it, they should have nothing to do for the winter, as they did not know that they could get hold of another, and *the* wanted to log off it in the winter. I asked him if they would sell at seven dollars and an half; he said he would not then without seeing his brother; that when he got to Portland and saw his brother, perhaps his brother would sell at six dollars or from that to eight dollars, if they could get hold of another tract; I asked him if he would not fix a price with me then, and he said he would not, and so it had to remain till we got back to Portland. This day we travelled on and near the stream on the eastern side of the L, which we supposed, and which Mr. Wescott told us, was a different stream from that we had seen the day before. This stream we crossed and recrossed several times; this stream appeared to me to be nearly the same size as the other, so that I remarked to Mr. Todd, that I was well pleased to find two such streams so well fitted to get the timber off the L. Mr. Todd replied, that he thought we should find it as he represented, and was well pleased himself to find it so. After we had seen sufficient of this stream, as we thought, to judge of it, and concluded to make our nearest way to what is called Week's Camp. We started, I think, between one and two o'clock. We travelled pretty diligently all the afternoon, and saw several glades of timber, and climbed once on a ridge so that we could see several miles round as we judged. We calculated that we could count from nine to twelve trees to an acre. Mr. Wescott, at this place, and also Mr. Chase, counted a great many more trees than I could, but I presumed they were a great deal better judges than I was. We arrived at Week's Camp about night, and encamped there for the night. Mr. Wescott showed me, on the said map which I had with me, where he said we were, and the place is marked on the said map C. At this Camp, the night we arrived and the next morning, there was some discussion as to whether we should go and explore the north part

or go home. Mr. Wescott was very desirous of going home, and said he ought not to have come, but that if it was absolutely necessary to go, he would go on. He and Mr. Moore both said they knew the north part well, and that it was much better than what we had seen. I was myself very much beat out, and after breakfast we found we should, if we went on, have to send out and get more provisions. We then, on calculation, found the time it would take to send for provisions, and go on to the north part, would not leave us time enough to get home, and make our preparations for concluding the bargain within the time fixed by the bond. This was what I thought, and calculated that to do the best we could, it would make five days difference whether we went and explored the land to the north part, or went out of the land then. I thought that as Mr. Chase appeared to be a sensible and honest man, I could send him to explore the north part, and could depend on his telling me truly whether the north part was as good as that we had seen, and I then engaged him to explore the north part, and engaged the pilot to go with him. On the night of our arrival at Week's Camp, we had much conversation about the north part. Mr. Wescott said the largest and best glades of timber were there; that the loggers had not been allowed to go into these good berths, but only to cut the scattering timber, and he frequently referred to particular points, and asked Mr. Moore if he did not know them, and if [he] did'nt recollect they were very heavily timbered. Mr. Moore said he did recollect the places, and there was good timber there if it had not been cut; and Mr. Wescott replied, that the timber had not been cut, and the teams had not been into those berths. The next morning after we had arrived at Week's Camp, it was agreed finally, that we would not go to explore the north or south part of the main land, and to send Mr. Chase and Mr. Moore to do it. Then it was concluded there would be time enough for me to go with Mr. Moore and Chase (the others remaining at the camp) to the eastern part of the land, where by climbing a tree we could get a view of a large portion of the tract. Mr. Chase, Mr. Moore, and myself started. It had rained in the night and was laborious travelling, and I found myself so sore from climbing before that I was unable to climb; as therefore it would be useless for me to go on, it was agreed that I should return to the camp, that Mr. Chase and Mr. Moore should go on and climb the tree on the hill, and bring me a report of what they should see. I returned to the camp and they went on. When they came back, both of them, Mr. Moore and Mr. Chase both said that the land looked well, that they had a better view of it than we had had at any other place, and that they wished I could have gone. Mr. Chase said he climbed a very high tree, and could see a great deal of timber, particularly north and south, and one pretty good berth off east from the tree where they climbed. After eating what little provision we had left, it was agreed to start for Bingham, and to visit by the

way the Austin stream at a place called Dead Water, where there were a great many of the logs lying which had been cut, as I was informed by Mr. Wescott, in the two previous winters; and went and were shown a large quantity of logs with various marks, and as I should judge of very superior quality, and in size by the average above mediocrity; and Mr. Wescott said that these were picked clean in the scatterings, but when we came to go into the berths, they would average better than these, and Mr. Wescott repeated here what he had before told me, that the loggers who had cut these logs had cut them from nine and ninepence to thirteen and sixpence a thousand for cutting and hauling; but that the same loggers had offered, and that we, no doubt, could get them to go into the berths and get out timber *out* for a dollar and a half a thousand. This he repeated many times. That night we got out of the woods and stopped over night at Mr. Dresser's, in Moscow. The next morning we walked to Bingham. There I settled with Messrs. Moore and Chase for the journey we had been, and agreed with them about going to explore the northern and southern part of the land as had been arranged. There I was desirous of seeing Mr. Weeks and Mr. Lord, who had logged on the land, and whose camps we had seen, to inquire of them about it. And I asked Mr. Wescott if we could not go see them; he said we could, but that we should have to hire a wagon for the purpose and would spoil two days, as it would make that difference in our return home, and we concluded we could not spare so much time; and then, after I had taken the certificates of Mr. Moore, and Mr. Chase, and Mr. Todd, I prepared to return. I was all this time very much hurried by Mr. Wescott, who professed to be in very great haste to get back to Portland on account of his family, among other reasons. Nothing material happened until we got back to Portland, where we arrived in two days. There Mr. Todd wished to know if I would as the agent of the purchasers say the bargain was closed, as, if so, he would have the deed prepared and go to Boston with me. I then assented that I considered the bargain as closed, and he said he would return to Boston with me. While I remained in Portland, I saw the Messrs. Wescott and tried to ascertain what they would sell their interest for. I saw Mr. David and Mr. William Wescott, and Mr. David Wescott informed me he had the control of three sixteenths more of the Ford tract. He said they would sell at six dollars, if they could sell immediately, as then they had a chance of joining in a larger purchase with another company, which they were not able to do unless they could sell this, and that they must give their answer to the other company within two or three days; and without they could buy there they should not be willing to sell the Ford tract, as they wanted something to operate on in the winter, and they accordingly gave me a memorandum or bond, which was to run from the twenty-ninth of June to the fourth or fifth of July, if I remember right. Mr. William

Wescott expressed his surprise that his brother was willing to sell so low, and said they would not have done it unless they had so good a chance to purchase into the other large company. After this I returned to Boston.

To the nineteenth he says:

This interrogatory is answered in the preceding answer.

To the nineteenth *b*, 1, he says:

I have already stated all I can state in answer to this interrogatory.

To the nineteenth *b*, 2, *a*, he says:

When I was at Portland, as stated in my answer to the 18th interrogatory, William and David Wescott gave me a bond for three sixteenths of the Ford tract, and through me they sold it to E. B. Paine, J. C. White, F. F. Wheelock, and D. Wheelock, mentioned in the question; they agreed to take it on the third of July. I wrote to Mr. Wescott, he came up the fourth or fifth of July and completed the contract.

To the nineteenth *b*, 2, *b*, he says:

In my answer to the eighteenth interrogatory, I have stated all I can in answer to this.

To the nineteenth *c*, he says:

When we were going to the land, I asked if we couldn't pass the people who had logged on the land, and make inquiries about it of them. Mr. Wescott said, no, that they lived quite out of the way.

To the nineteenth *d*, he says:

How far I explored said land, and why I explored it no further, is already stated in my answer to the eighteenth interrogatory. I do not remember making to said Todd any such declarations as those set forth in the question.

To the nineteenth *e*, he says:

I have already stated all I can state in answer to this interrogatory.

To the nineteenth *f*, he says:

I have already stated all Mr. Wescott said; he said nothing about any part of said land being burnt, and we said nothing of it at the exploration mentioned.

To the nineteenth *g*:

What Mr. Todd said, before we went to the land, I have already stated—this he repeated many times, and as often as we talked about the land; the number of times, and places, I can't say.

To the nineteenth *h*:

The certificates exhibited to me marked C and D, are the certificates given to me by the signers of them; the time and place, and circumstances in which they were given to me, I have already stated in answer to the eighteenth interrogatory.

To the nineteenth *i*, he says:

The fact that the persons named were willing to, and did sign the certificates, did influence my opinion of the value of the land; the certificates were given to me to be exhibited to the plaintiff and other persons intending, or who might intend, to buy the land. I

can't answer any fuller the purposes for which the notes were given to me, at the time the certificates were given. Mr. Todd remarked, that he didn't think I should want his; I replied to him, that I wanted the certificates to show my employers, and to prove that the signers of the certificates thought of the land as I did. Who were present at the conversation, I don't remember.

To the nineteenth *k*, he says:

I did not suppose, when I went to the land, that any authority was given to me to bind the bargain for the purchase; but, I presumed that, if I found the land as Mr. Todd represented, then the bargain, by its terms made in Boston, would be closed without any action on my part in closing it. All that passed between me and Mr. Todd on the subject, I have stated in my answer to the eighteenth interrogatory. How far I was authorized to make the contract for the purchasers, must depend on the construction of the instrument signed by them and Mr. Todd; my own apprehension of it, I have stated.

To the twentieth he says:

When I went upon the land, I had never explored land before, and had no experience in the business, and was not at all conversant with new or timber lands; all the particulars of my exploration and the opinion I formed of the tract, and the quantity, quality, and kind of timber upon it, I have already stated.

To the twenty-first he says:

I made no verbal or printed formal report, but on my return to Boston about the first of July, I stated to Otis Daniels, Josiah Daniels, Mr. Soren, and the other purchasers, as I happened to meet them, my experiences in my exploration, as they are detailed in my answer to the eighteenth interrogatory. On my return to Boston, I went round with Mr. Todd to assist in completing the transaction, and saw the purchasers at their several places of business and elsewhere.

To the twenty-second he says:

The plaintiff did become the purchaser of seven thirty-second parts of said Ford tract, at the price of five dollars per acre, one quarter part cash, and the balance in three equal notes for one, two, and three years, severally, from the twenty-ninth of June, with a mortgage on the premises, as security for the notes; he paid the cash I have stated, and gave his notes, as described, to Mr. Todd in my presence.

To the twenty-third he says:

The notes were given, and the cash was paid by Mr. Daniels, to Mr. Todd, at the store of Thomas G. Wills, in Water street, in said Boston, soon after the first of July, in its first or second week, the precise day I don't recollect. As to the appropriation of the consideration received by Mr. Todd, which was made by him, I have obtained from the records, at Portland, the certified copy of the agreement hereto annexed, marked Z.

To the twenty-third *b*, he says:

I was indirectly interested in the purchase by agreeing to take one thirty-second part from the plaintiff, at the price of five dollars per acre. I paid him one quarter part cash, and for the balance, gave him three notes, signed by myself, for one, two, and three years, severally, from the twenty-ninth of June. I was induced to become a purchaser by the representations of Mr. Todd, and the result of my explorations. I am not now interested in said tract, for I sold my interest to Mr. Daniels, the plaintiff, by an instrument, a true copy of which is hereto annexed; the original I retain, as it is the only evidence I have of the transaction; the copy annexed is marked Y. I was interested in this suit when it was first commenced, but my interest in it was released by the instrument last referred to.

To the twenty-third *c*, he says:

The plaintiff did know that I was to be paid by Mr. Todd, for I stated it to him.

To the twenty-third *d*, he says:

All that I can say in answer to this question, I have already stated. Mr. Todd stated to the plaintiff and to me, that he had no personal knowledge of the land, and depended on the representations of other persons and the certificates referred to.

To the twenty-third *e*, he says:

I should not have formed the opinion I did of the land, nor purchased it myself, nor advised the plaintiff to purchase it, had it not been for the certificates referred to, and the declarations or representations of Mr. Todd; these certificates were exhibited, and the representations were made, to induce the plaintiff and others to purchase; and as facts to be relied on, not as opinions merely, or as inducements to the plaintiff and others to examine for themselves; and the purchase was made by the plaintiff and the other purchasers, upon these certificates and representations, confirmed by my exploration.

To the twenty-fourth he says:

The manner and amount of Mr. Todd's interest, as represented by him to me, I have already stated. He has informed me also, (since his first application to me,) that W. H. Codman, Esq., of Portland, was his partner in the transaction. As to the interest of the other defendants, I know nothing more than appears by the copy of the instrument annexed, marked Z.

To the twenty-fifth he says:

All that I know is derived from the instrument, the copy of which is annexed, marked Z.

To the twenty-sixth he says:

I have twice explored said tract, the last time in June, eighteen hundred and thirty-seven, at the procurement of the plaintiff and others, to ascertain whether I could find the places and timber shown to me in June, eighteen hundred and thirty-five. The at-

torney for the defendants, Judge Preble, and Mr. Todd, were notified formally and personally of my intention of going on to the land, and they were invited to join me. They did not join me, nor agree to do so, they gave no reason that I know of for declining, except that Judge Preble said his business with the case was in court, and not out. They did nothing that I know of about such exploration.

To the twenty-seventh he says:

The second time I explored said land, Mr. Robert W. Molyneux accompanied me from Boston. We engaged, as explorer, Daniel Eastman, Fribourg, , and Joseph Spaulding, jr., as surveyor, who was the man who originally, under the appointment of the Government, run out the lines of the Ford tract. Mr. Moses Chamberlain, jr., of Moscow or Brighton, Mr. Wadsworth Bolter, lumberer, and Luther Moore, as cook, (he went with us before,) he was a sort of guide too. We undertook to go the same route we had been before, and Mr. Moore was confident he could show me the same places on the land. We went over the Babbit Ridge, and there took a view of the land. We then followed Mr. Moore into the woods, he undertaking to carry me where, in my previous exploration, we encamped the first night. We followed him till he gave it up, and said he thought he could not find it, and didn't [find] it. He took me to no place that I remembered. In the afternoon I requested Mr. Chamberlain to show us where he thought we went. He then took the lead, and as we travelled, we crossed one place which I recognised, and saw some timber, considerable of it was poor. Mr. Eastman and Mr. Bolter then showed me what they called conksey trees, and the marks were very different from those given me by Mr. Wescott and Chase, being hollows or apertures in the trees, the tops being frequently green. We saw a number on the first day, tho' we didn't count them. As we travelled, we came to the road which I had seen in my previous exploration, and proposed to travel, to which Mr. Wescott then objected, as he said it would lead to Ford town. Now Mr. Chamberlain led us right along this road, which led to camps built by people who had logged on the land some years before. Mr. Spaulding said these camps were on the L part, and we saw the stumps of large trees which had been cut at some distance from the camps. We encamped over night, and climed and counted forty-four trees in the morning. We started to find the easterly line of the L. Mr. Spaulding found it, and followed it to the northeast or inner corner marked I on the map referred to, where we found a tree designating the spot, marked with Spaulding's initials. This was a very different place from that which Mr. Wescott showed me—that was indistinct—this was marked with a large tree with marks round it. I think any one who had seen it once, could not forget it or mistake another for it. During this exploration, I heard Mr. Moore say to Mr. Chamberlain, that he thought it was likely that, in our previous exploration in 1835, we had been shown timber not on the land. I now asked Mr.

Chamberlain to show us the place and timber he supposed we had been shown in 1835. He did. We followed him, and I soon recognised the places I had seen before, and we found our camp on the first expedition, which Wescott had said was on the L. part. Mr. Spaulding now said it was not on the Ford tract, and he pointed it out on the [map,] as the spot now marked K. We then came to another spot which I recognised, and where we counted on our previous exploration, and Wescott counted two hundred and sixty-nine. This was some of the best timber we saw on the first exploration, and Wescott then said it was on the tract—and now Mr. Spaulding said it was not on the tract, and half a mile from the line. Moore said that he was perfectly satisfied it was off the Ford tract, and admitted it was the spot we were at before—he made the same admission about the camp. We next went to the stream we had seen on the first exploration, and followed it, which appeared sufficient, after being cleared, to run the logs; but this one stream was the only stream of any size to be found on the L. After examining the river, we asked Mr. Moore to lead us to Week's camp, which he had guided us to from the stream on the previous exploration. He guided to Week's camp, and led by a different route, and brought us there in half the time taken in 1835. In 1835, Mr. Wescott denoted on the map, the location of Week's camp as at C, and Mr. Spaulding now denoted the camp as at M. We staid here over night. While we were travelling, I told Mr. Chamberlain and Mr. Eastman that Mr. Todd, in Boston, and Mr. Wescott, on the land, frequently had said that the land had not been logged, only the timber cut from the scattering. Mr. Moore remarked, he heard Mr. Wescott say to us, that many glades of timber (designating them) had not been cut, while he, Mr. Moore, had since ascertained they had been cut at the time. Mr. Wescott was logging on the land. The next morning I went with Mr. Chamberlain and Mr. Eastman, and Mr. Moore as our guide, to the same place to which, as Mr. Moore said, he and Chase went in 1835, and where they said the land appeared well timbered, and Mr. Chase climbed the high tree by cutting down another against it. We found the tree with the tree against it, and climbed it, and found the land did not appear well timbered—for we could see very little that looked like pine trees, and even a man not acquainted with timber tracts, would not, as I [think,] mistake it for a good tract. As Mr. Bolter, Mr. Chamberlain, and Mr. Spaulding, were well acquainted with the residue of the tract, and as I had not been over the residue in my first exploration, I concluded not to go now, and the next day we went out. From what I saw at this exploration, and learned from others, I judged that (considering the land unseen like that seen) there would be not over ten millions of timber. I was induced to think my first estimate was so erroneous, from finding I had not seen so much of the land as I thought, and some of it more than once, and much timber that was not on it.

To the twenty-eighth he says:

My knowledge of the boundaries was derived from Mr. Wescott in the first exploration, and Mr. Spaulding in the second.

To the twenty-ninth, *a*, he says:

I have already answered this interrogatory.

To the twenty-ninth, *b*, he says:

I have already answered this interrogatory. Not finding but one stream, instead of two, and the camps, and the circumstances stated in my answer to 27th, and the fact that the route from the stream to Week's camp was so long the first time, compared with the second; these induce me to think I was carried through the same timber twice.

To the twenty-ninth, *c*:

This question I have already answered.

To the thirtieth he says:

I can answer this question no further than I have.

To the thirty-first he says:

My opinion I have already expressed, that the land does not contain over ten millions of timber; my reasons appear from my previous answer, and are fully given therein.

To the thirty-first, *a*, he says:

The said tract, in my opinion, is worth about two dollars and a half an acre, calculating it as timber and settling, though I consider it rather as a settling. It was purchased altogether as a timber tract by the plaintiff, and neither he nor I would have purchased it at any price as a mere settling tract. Since the plaintiff has been known to me he has lived in Boston as a merchant, and he never, so far as I know, made any previous contracts for new or timber tracts, or went near to the Ford tract.

To the thirty-second he says:

Between June the twenty-ninth, eighteen hundred and thirty-five, and June, eighteen hundred and thirty-six, I had many conversations with Mr. Todd at Boston and Portland. At one of these conversations, which was, I think, in May, in eighteen hundred and thirty-six, at Portland, Mr. Todd said he heard that Mr. Soren had been informed there was no timber on the Ford tract, or next to none, and that the sale had been a fraud. Mr. Todd said he had been to see the Messrs. Wescotts about this, and it could not be true; that the land must be as represented; that, if it was not, and the story was true, the bargain should be rescinded and all the money returned to the purchasers if it cost him every cent he was worth. Mr. Todd appeared to be very much in earnest, and the substance of this conversation was repeated to me in other conversations by Mr. Todd afterwards. On the sixth of May, in Portland, I had a conversation with W. H. Codman, who told me had one half the interest in Mr. Todd's bond. Mr. Codman said that the defendants had consulted Judge Preble in regard to the claim of the present holders, if it should turn out that there were not sixty

millions on the tract, as represented by Mr. Todd in Boston, and that Judge Preble gave it as his opinion that a claim on the defendants by the purchasers would be good, and that the sale would be set aside by the court as a real or probable fraud if there should be only from five to ten millions on the land, (of timber,) or that, if it should turn out there were more than ten and less than sixty millions of timber on the land, an equitable allowance would be made by the court. And Mr. Codman repeated several times that the gentlemen were all agreed, that there was but one mind on the subject, that, if the timber did not hold out, or nearly so, to the sixty millions, as represented, they were bound, in law and equity, to make the holders all reasonable allowance, and that they would do it as soon as the fact could be ascertained. Of this conversation I made a memorandum on the ninth of said May, which I have now used, while deposing, to refresh my memory. At this time I was in Portland, because I had received in Boston a letter from Mr. Bolter, who had contracted to get the timber off the land, stating, as a reason for not complying with my wish that he should put more than five teams on the land, that he could not find timber enough on the land to make an object, and that he thought we must be deceived in the land. On receiving this letter I had called a meeting of the company in Boston, who directed me to go to Portland and state to the defendants what we had learned, and demand of them to rescind the bargain. And this demand I made of Mr. Todd, I. Waterhouse, T. Warren, William C. Mitchell, Tristram Mitchell, E. Hayes, David Wescott, and William Wescott, in May, (and about the sixth of May,) eighteen hundred and thirty-six. Upon the meeting of the company, in Boston, of the purchasers, it was agreed to hire a Mr. Thompson (who was interested in timber lands and engaged in logging on the Kennebec river) to go and examine the Ford tract, and notify the defendants that he was going to explore the tract, and they might accompany him if they saw fit. Mr. Thompson reported to the company in Boston very specifically, and in writing he gave an estimate of the amount of timber on the land. I forget the precise estimate he gave, but it did not exceed five million of timber. After this report was received, I was sent by the purchasers to Portland on the errand stated. This I did not recollect at first. At this time, when I was in Porland, I also had a conversation with Mr. Todd, Tristram Mitchell, and Mr. Hayes, at the Elm tavern, in which they said they were ready, and they believed all the defendants were ready, [to do] what was right if the tract was as I stated, but that they did not believe a word of the statement of Mr. Thompson or Mr. Bolter, and were confident the land would turn out as originally represented by Mr. Todd. Upon this I wrote to Mr. Daniels, the plaintiff, that I thought a reasonable settlement could be made if the company would send to Portland some one authorized to make a settlement; and the company sent Mr. Molineux and Mr. William M. True to Portland to make a settlement, if possible. On the ar-

rival of these gentlemen the defendants were called together; Mr. Gooch did not attend, nor do I know he was notified. The defendants who did attend, all those I have named above, agreed to join another exploration, and to go about the first of June; and all said that, if the land should turn out as we feared, they should be ready to do what was right. At this meeting Mr. Warren said that they (the defendants) did not guaranty any amount of timber, and that they told us what they supposed was the case, and we, the purchasers, were to go and judge for ourselves. Mr. Todd said immediately, no, gentlemen, the sale was based upon a guaranty that there was sixty millions. This was in the presence of all the defendants except Mr. Gooch. Mr. Molineux, Mr. True, and myself then returned to Boston. About the twenty-seventh May, Mr. True, on his own motion, wrote to Mr. Todd the letter, a copy of which is annexed, marked O, E, G, L, and the defendants refused then to go and explore the land as agreed. Then, at the direction of the plaintiff and others, I went to Portland and saw the defendants. They objected to the suggestion contained in Mr. True's letter about signing legal instruments; said they thought there was to be no law about it, and that if we wanted to go to law it was open to us, and they would have nothing more to do with it. I told them Mr. True's letter was his act and not the company's, and that the company was very desirous of avoiding any litigation, if possible. This was repeated by me several times, and, at last, the agreement, signed by Mr. Codman for the defendants, was made, and Mr. Codman was authorized to draw it up by the defendants. Mr. Codman, in consequence, drew the agreement hereto annexed and signed by him, and marked Q, and gave it to me, with the copy of Mr. True's letter referred to, as marked O. An exploration, according to the agreement, then started for the land, but I did not accompany it.

To the thirty-third:

When we went on to the land the first time, our object was to ascertain the contents of it in pine timber, and we paid no attention to the cedar which Mr. Todd said (as stated above) was on the land, and would enhance its value; but, subsequently, neither we in our explorations, or the persons employed by us to log on the land, as they reported to us, could find cedar fit to cut, or worth hauling. In our explorations we could find only scattered trees, or small cedar in swamps, which was valueless, and added nothing to the value of the land. Among his statements recommendatory to the land previous to our purchasing it, and also in answer to inquiries made, Mr. Todd frequently stated that the land, being only a timber tract, would not be liable to be taxed, or would be taxed next to nothing; whereas, soon after it was purchased, some settlers on a small piece of the land formerly making a corner of this tract procured an act of incorporation, then taxes and fines were imposed, which, exclusive of this year, amount, I think, to over eight hundred dollars. I

remember, on reflection, that on the first morning I was in Portland on my first exploration, I went to find Mr. Oliver Hale, to make inquiries about the land, but he was out of town, and I did not see him.

(Signed) THOS. W. HASKINS.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss., City of Boston:

On the twenty-seventh day of October, in the year of our Lord eighteen hundred and thirty-seven, the within named Thomas W. Haskins personally appeared before me, and after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition was taken, and true answers to make to the interrogatories annexed to the commission hereto prefixed, and to him addressed, was by me examined on said interrogatories; and the said examination was adjourned until three o'clock in the afternoon of the thirty-first day of October, when the said witness was again examined; and the said examination was again adjourned until the second day of November last past, when the said deponent was again examined; and the said examination was adjourned again until the sixth day of November, when the said deponent was again examined; and the said examination was again adjourned until the eighth day of said November, when the said deponent was again examined; and the examination was again adjourned until the eleventh day of December, when the said examination was continued; and again adjourned until the thirteenth day of December, when the said examination was continued; and again adjourned until the twenty-fifth day of December, when the said examination was completed, and the answers to said interrogatories were written down by me in the presence of said deponent as they were given, were by him carefully read over, and then by him subscribed in my presence, as for his deposition taken under the commission aforesaid.

EDWARD G. LORING,
Com'r and Jus. Pacis.

Testimony of R. W. Molineux.

The answers of Robert W. Molineux to the interrogatories to him addressed, and to said commission annexed.

To the first he says:

I know Otis Daniells, and have known him about six years; I know William C. Mitchell by sight only; I know Mr. Todd, and

have known him since June, eighteen hundred and thirty-five; I know Mr. Waterhouse, and became acquainted with him in the spring of eighteen hundred and thirty-six; I know David and William Wescott, I became acquainted with them in June, eighteen hundred and thirty-five; I know Mr. Warren, and became acquainted with him in the spring of eighteen hundred and thirty-six; whether any other persons than these are defendants or not I don't know.

To the second he says:

The first conversation I ever had with Mr. Todd was in June, eighteen hundred and thirty-five, in Boston, and I think at Mr. Thomas W. Haskins' store. Mr. Haskins introduced me as one of the persons whom he had applied to [to] take an interest in the Ford tract. I inquired of Mr. Todd about the land. He said it was a good tract, and had been operated on but very little; he said he would guaranty that it contained sixty millions of feet of good pine timber, and he thought it would overrun that. He said there was a portion of it which he had not a bond for, and that portion belonged to persons who did not wish to sell, but wished to keep their portion to operate upon in company with those who should become purchasers of the part he had a bond for; he said he never had been on the land himself, but he referred to certain certificates, and said they were from persons he could rely upon, and that he had no doubt the land was as represented. From the 17th to 25th, I had a number of conversations with Mr. Todd.

To the third he says:

Mr. Haskins introduced Mr. Todd as the person who held a bond for (as I think) ten sixteenths of the Ford tract. In the conversation I do not recollect that Mr. Todd stated directly, or otherwise, than as above mentioned, that he held the bond, or that he showed it to me; I never read the bond, and have it not, so that I cannot state its contents or annex it.

To the fourth he says:

Mr. Todd never requested me to aid him in selling said tract, in any way.

To the fifth he says:

The quantity of timber Mr. Todd stated, as I have above deposed; the quality, he said, was good; that it had on it a swamp of spruce of (I think) two thousand acres, which he said was very valuable. I don't recollect that he stated the facilities of getting the timber off the land.

To the sixth he says:

The certificates referred to were shown to me by Mr. Haskins. I don't recollect that Mr. Todd showed me any, nor can I say any were shown to me in his presence.

To the seventh he says:

I don't recollect that Mr. Todd stated to me the characters of the signers of the certificates.

To the eighth he says:

I never applied to any person to become a purchaser of any part of said Ford tract.

To the ninth he says:

I refer to my next preceding answer.

To the tenth he says:

I answer this as I did the question preceding it.

To the eleventh he says:

I never exhibited any writings relating to said tract to any one.

To the twelfth he says:

I have stated what representations Mr. Todd made to me; what he made to others I don't know.

To the thirteenth he says:

I do not know that Mr. Todd exhibited any certificates to the plaintiff or others.

To the fourteenth he says:

I made no such representations as referred to.

To the fifteenth he says:

I never was employed, or requested, by Mr. Todd, to aid him in any way.

To the sixteenth he says:

I signed the said agreement referred to, as marked E, in Mr. Todd's presence; he then treated the agreement as genuine.

To the seventeenth he says:

I know nothing of the matter inquired of.

To the eighteenth he says:

I have been from Boston to the Ford tract, to explore it, three times. The first time, I started from Boston in June, eighteen hundred and thirty-five, in company with Mr. Todd and Mr. Haskins; on our arrival at Portland, Mr. Wescott joined us, and proceeded with us towards the Ford tract. I went at Mr. Haskins' and Mr. Daniels' (the plaintiff) suggestion; my inducement was my own interest in the land. We went from Portland to Augusta; thence to Bingham. Mr. Haskins went by the procurement of the plaintiff, and others in Boston interested in the land. Mr. Todd went to show us the land. On leaving Portland there were two stages started; I was in one, and the rest of the party in the other. I first saw Mr. Wescott after our arrival at Brunswick, I think it was, and was there introduced to him as a person who was to accompany us. While on the Ford tract Mr. Wescott informed me that he accompanied us at the request of Mr. Todd; that Mr. Todd came to him the morning we left Portland, and told him he must go with us; that he declined because he was sick; that Mr. Todd replied, "You must go, or I'm down." We reached the Ford tract Monday noon, and left it Wednesday afternoon, or Thursday afternoon, I can't say which. At Bingham, Mr. Wescott procured Luther Moore as pilot, and Mr. Haskins engaged Mr. Chase as surveyor, and these persons accompanied us in our exploration of the Ford tract. In this exploration

we first saw the Ford tract from a hill called Babbit's Ridge. We entered the tract on the L part, and, as I think, somewhere near the spot marked A on the map, now exhibited to me, annexed to said Haskins' deposition. I am unable to trace our course on the map, or specify the quantity or quality of timber, or the location of the timber or streams shown to us. I had never been on such lands before. I took no notes, but Mr. Haskins, who was employed to ascertain the quality of the tract, did, and I trusted to him. Several streams were shown to us, as different streams, but their location and names I don't now recollect. We encamped, the first night, on what was said to be the L part of the Ford tract. I recollect at one time we came upon a road which Mr. Wescott said would carry us off the tract, and lead us (as I think he said) to Brighton. At different times the others climbed trees; as I was sick, I never did that I recollect. From Week's camp we sent Mr. Chase, Mr. Wescott, and Mr. Moore, to examine a part of the tract we had not seen. On their return they said Mr. Wescott and Mr. Chase had climbed a very tall tree, and that the timber was abundant, and very large; that there was a great deal of timber, and more than they had any idea of. They said it was superior to any thing we had seen during the exploration. Mr. Wescott spoke very favorably of the tract, and expressed himself strongly and frequently as agreeably surprised by the timber on the land. He said he never had explored the L part before, and that there was more timber on it than he had any idea of; and that it was so much better than he anticipated that he and his brother should not want to sell their portion. He said the other part, which we had not seen, the north part, was very superior, as to its timber, to what we had seen; he said that up there were "*the bowels*" of the timber, and that we had not been into the bowels of the timber; he said that part had never been logged on, but that where we had been they had picked up the timber. Mr. Wescott showed us some logs in a stream; these were very large, and he said some of them came off of the Ford tract; and that our logs would be got off by that stream. We did not make a complete exploration of said tract, because Mr. Wescott said that we had explored more than people generally did who were exploring to purchase; that we had explored the part which had not been explored before, and the part we had not seen had been explored, and was much superior to what we had seen; and that if we stayed longer we should not get home in time. Mr. Todd said, also, if we staid longer the bond would expire, and a good deal was said about it; and the provisions which were prepared by Mr. Wescott, on his proposal, were short, and gave out; so it was determined to leave the land. It was agreed that Mr. Chase and Moore, (as Mr. Haskins did not feel satisfied with the exploration made,) should go and explore the northern part. During the exploration Mr. Wescott and Mr. Moore, and Mr. Chase, and Mr. Haskins frequently climbed trees to count the timber, and Mr. Wescott always made more than

any one else. How much we explored, I can't state more fully than I have.

To the nineteenth, *a:*

In my next preceding answer I have already answered this question as fully as I can.

To the nineteenth, *b*, 1, he says:

To the nineteenth, *b*, 2, *a:*

I know nothing as to the matters inquired of personally.

To the nineteenth, *b*, 2, *b:*

Many times during the exploration, Mr. Wescott said Mr. Moore was a first-rate pilot, and knew every inch of the ground; and that he had himself employed him to go on the land. He said there were none in the country equal to him as a pilot. And these things, and such as these, Mr. Wescott said almost every day. As I have stated, said Moore accompanied us as pilot.

To the nineteenth, *c:*

I did not seek to make any inquiries.

To the nineteenth, *d:*

I have already stated that I did not, and why I did not, make a thorough exploration of said tract. I did not make to said Todd any such declaration as the question suggests; nor to any one else.

To the nineteenth, *e:*

I have already stated what passed at Week's camp relative to exploring the north part of said tract, and I cannot answer this question further.

To the nineteenth, *f:*

In my previous answers I have stated all the representations of said Wescott, which I recollect. He did not say any thing to me of any part of said tract being burnt over.

To the nineteenth, *g:*

I do not recollect that said Todd made statements like those referred to in the question.

To the nineteenth, *h:*

The certificates referred to were delivered, not to me, but to Mr. Haskins, in my presence.

To the nineteenth, *i:*

The certificates were delivered to Mr. Haskins, for the purpose declared at the time. They were given that he might satisfy his employers, and that they might be used by the purchasers in case they wished to sell. The certificates did influence my judgment of the tract very much, and I considered they were given to influence the judgment of any persons to whom they might be exhibited, and they formed one of the inducements for my purchase and the plaintiff's.

To the nineteenth, *k:*

I never had, nor represented to any one that I had, nor attempted to exercise any such authority as is inquired of.

To the twentieth he says:

My occupation has always been (since I had any) a dry-good merchant in Boston. I never had been on new land before, or timber lands. In the exploration described above by me, I thought very favorably of the Ford tract. I formed for myself no precise estimate of timber, as to quantity, quality, or kind; my inexperience prevented it. I only thought it rather under than above what the report of the exploration estimated it at.

To the twenty-first he says:

I made no report or statement of the kind inquired of to any one.

To the twenty-second he says:

To complete the bargain, the purchasers met at T. G. Will's office in Boston. I think I there saw Mr. Otis Daniels deliver cash and notes to Mr. Todd; the amount of the cash or notes Mr. Daniels gave, or the precise interest he purchased, I can't now state. The terms of his purchase were one quarter cash, and the rest notes secured by mortgage of the premises.

To the twenty-third, *a:*

As to what Mr. Todd received, I have already stated all I know. I do not know what disposition Mr. Todd made of what he received, except that when I met at Portland the defendants mentioned in my answer to said first interrogatory, they said Mr. Todd had divided with them.

To the twenty-third, *b*, he says:

I was a purchaser of one thousand acres in said tract, at five dollars an acre. I paid at the time of the purchase, in Mr. Well's office, one-quarter part cash, and the rest in three notes of one, two, and three years each, from, as I think, the thirtieth day of June, eighteen hundred and thirty-five. I was induced to become a purchaser by the representations of Mr. Todd, Mr. Wescott, and Mr. Chase, and the report of Mr. Haskins as to the value of the land. I retain my original interest in the tract. I have never been interested, that I know of, in this suit.

To the twenty-third, *c:*

I never was paid or employed by said Todd, as the question supposes.

To the twenty-third, *d*, he says:

Mr. Todd told me that he had no personal knowledge of the tract, and that he made his representations from the statements and certificates of others—of the truth of which he had no doubt. What Mr. Todd told the plaintiff, I don't know.

To the twenty-third, *e*, he says:

Mr. Todd's representations were made to me as facts that could be relied on, and he stated he knew the people upon whose certificates and statements he made his representations, and had not a shadow of doubt of their veracity. I have stated when Mr. Todd made his first representations to me, and he afterwards frequently renewed them—how often, I can't say; all that I know about the

exhibition of any certificates, I have stated. The representations made, and the certificates exhibited to the plaintiff, I know nothing about. Had it not been for the certificates referred to, and representations made by said Todd and others, I should not have formed the opinion I did of the timber on said tract, or the value thereof, or become a purchaser therein. The representations and certificates induced—and were, I consider, intended by defendants to induce—me to purchase. I never advised the plaintiff to purchase an interest in said tract. From what I saw of the transaction, I consider the plaintiff was induced to purchase a part of said tract, from the representations made, and certificates exhibited, by said Todd, and the report made by said Haskins.

To the twenty-fourth he says:

I can say nothing, in answer to this question, which I have not already stated.

To the twenty-fifth he says:

I heard Mr. Todd or Wescott, and I can't say which, say an agreement was made between the defendants relative to the division among them of the proceeds of said tract; and that when Mr. Todd had effected the sale in Boston, and returned to Portland, the defendants were called together, and the proceeds divided among them. I never saw the agreement, and cannot state its contents, nor annex it, nor a copy of it.

To the twenty-sixth he says:

I went twice besides the time stated to explore the lot: in June, (as I think,) and in the year eighteen hundred and thirty-six, (on reflection it was in May in said year.) I was requested by Mr. Daniels, the complainant, and urged by Mr. Haskins, to go a second time and explore. I declined on account of my engagements in Boston. Between this time and the first exploration, the purchasers in Boston had been informed by Mr. Ebenezer Thompson, (who had been employed by some of the purchasers of a portion of the tract to explore it,) that there was but less than five millions (his exact estimate I can't state) of timber on the land. On my declining to go, William M. True, who was interested in the land, was employed by the purchasers to go and explore the land, and notify the defendants in Portland that they might accompany him, and explore the tract mutually with him. Mr. True went to Portland, and wrote to the purchasers from there that the defendants declined joining him to explore the land unless Mr. Haskins or I went. Mr. Haskins was unable to go, and urged me to go; at his instigation and the request of the complainant, I went. Mr. Haskin's had informed me that the defendants had agreed in writing to join with the purchasers in exploring the land; and if the timber should turn out differently what had been represented on behalf of the defendants, that they would make a settlement with the purchasers. At Portland I saw Mr. True, and he went to notify the defendants that I had arrived, and we were ready to go on.

We left Portland in the morning, accompanied by Mr. Mitchell, (the one who is not lame,) as the agent of the defendants, and Mr. Libbey as their explorer, and Mr. William Wescott. I expected Mr. Todd would join us, and was told he would the next day—that he was then sick. He never joined us. We proceeded to Bingham: there we found Mr. Killgore, to whom we had written to accompany us as explorer for the purchasers, and he and Mr. Luther Moore also accompanied us to the Ford tract. Another man named Moore went with us to carry the provisions, and Mr. Mitchell procured Mr. Joseph Spaulding, who originally lotted off the tract, to go with us and run the lines. These persons formed with us the party. A Mr. Codman, before we left Bingham, arrived from Portland; he said Mr. Todd was sick, and he also accompanied us, and a Mr. Thompson also accompanied us from Bingham. Before we left Bingham, I suggested to Mr. True that the explorer for the defendants, and the explorer for the purchasers, had better explore together and compare their estimates; and Mr. True went to Mr. Mitchell to agree upon this, and, returning, said that Mr. Mitchell agreed to it. We reached the Ford tract, and Mr. Wescott requested Mr. Luther Moore to find the camp where we encamped the first night of the exploration, and then to find the nuble. Mr. Moore said he could, and after spending a good part of the afternoon in looking for the camp, was unable to find it. I then told Mr. Mitchell I had come there to explore the tract mutually with him, and that, as we had many people there at great expense, I wish to do it, and not waste more time in looking for the camp, which I didn't care about finding. Mr. Mitchell said he wanted to find the camp, and we continued to look for it till night. We did not find it, and encamped for the night. The next morning I urged that we should proceed to business systematically, and proposed to Mr. Mitchell that as I came there to explore the lot with him, the explorers should proceed to do it together, and compare their estimates. Mr. Mitchell replied, that he didn't come up there to scale the lot by spending a great number of days there, and that his explorer would, on his return, exhibit his estimates to his employers, and would show them to no one else. I then told Mr. True that it was useless for us to stay there longer, but we finally agreed to follow them where they went, as our explorer would have as good chance of making an estimate as theirs, particularly as we had two, Mr. Killgore and Mr. Thompson. Mr. Spaulding then run the lines of the L part, and spotted them up and down. From there we went on to the main body of the land, to a place called Lord's Camp, as I think it was: there Mr. Wescott, and Mr. Libbey, and Mr. Mitchell, and Mr. Codman, went out and conversed together awhile, and then called to them Mr. Spaulding. Mr. Spaulding soon returned, and said he should leave there, as he said he had run the L part, and we should not want him any more. Mr. Wescott and Mr. Codman also said they should

leave, and those three went. The next day we travelled about the land nearly all the forenoon. I then told Mr. True, that as Mr. Wescott had gone, and was unable to find any of the places he wanted to show me, there was no use in my staying any longer, and that I should go; and then Mr. Thompson and myself left the tract.

To the twenty-seventh:

Who accompanied me the second time, I have already stated. The places and direction of that exploration I have stated as nearly as I can. We attempted to take the same route which we did on the first exploration. We saw a part of the timber on the second, which we saw on the first exploration, and a part only. The opinion I formed of the timber on the tract was, that in quantity much less, and in quality much poorer, than I thought it at the first time. I formed my opinion on the statements of the scalers who went with us. The third time that I explored the said tract was in June last. I then went to Portland with Mr. Haskins, and there notified the defendants that we intended to explore the land, and that they could accompany us; they proposed to make a settlement, and some terms were proposed on each side, but nothing was agreed upon or effected, and Mr. Haskins and myself went to explore. The defendants did not accompany us. We engaged Daniel Eastman and Moses Chamberlain as scalers, and Luther Moore as pilot, and Mr. Spaulding as surveyor; these, with a man who carried the pack, made the party. We followed the same tract as we did at the first exploration. At Week's camp, Mr. Haskins, Mr. Chamberlain, and Eastman, went off to the place where Mr. Moore and Mr. Wescott and Chase went, and said they found the timber so large and abundant. Mr. Haskins and the others found the place, and high tree, as they said, and reported there was no timber like that described there. We found a large berth of the timber which had been shown us in the first exploration as on the Ford tract, and this Mr. Spaulding and Mr. Chamberlain said was not on the Ford tract. With this, Mr. Haskins seemed to think that enough was proved, and we returned to Bingham. On the third route, we recognised most of the places of our first exploration. The opinion of the quality and quantity of timber which I formed, was about the same as the second time, and on the same grounds, the opinion and statements of the scalers who accompanied us.

To the twenty-eighth he says:

I did not in the first. Some of the lines in the second and third exploration by Mr. Spaulding's marking them out.

To the twenty-ninth *a*, he says:

I have answered this question as fully as I can. I formed, myself, no precise estimate at any time.

To the twenty-ninth *b*, he says:

I think in our first exploration we were shown the same berths several times, as different berths, because we travelled in timber all

the time on the first exploration, and much less on the second and third. During our first exploration, I stated to Mr. Moore, then we had changed our course; he insisted we had not, and I said, if we had not, the sun had.

To the twenty-ninth *c*, he says:

I have already stated all I know relative to this inquiry.

To the thirtieth he says:

I can make no other than the next preceding reply.

To the thirty-first he says:

I believe there was less than ten millions of timber on the land, and my opinion is formed, as I have stated, on the statements of the scalers who accompanied me in the second and third exploration.

To the thirty-first *a*, he says:

As to the value of said tract, I would gladly sell at a dollar an acre. The tract was purchased as a timber tract, and would not have been purchased as a settling tract by any of the purchasers. Mr. Daniels has always resided as a merchant in Boston since I knew him. I don't know that he owned any other timber land than in the Ford tract ever, or was ever near it.

To the thirty-second he says:

In June, eighteen hundred and thirty-six, I was present at a conversation between Mr. Haskins for the purchasers, and Mr. Waterhouse, Mr. Warren, Mr. Codman, and Mr. Todd, and the two Wescotts and the two Mitchells. Mr. Haskins stated the accounts we had received from Mr. Chamberlain of there being much less timber than was represented by Mr. Todd. The defendants named, rather ridiculed the idea, said we were frightened, and if the land was as we feared, they would rescind the bargain. Last summer I met Mr. Warren in Portland, Mason Greenwood was with me, and told Mr. Warren the matter about the land might be settled, he thought, if the defendants could be brought together. After some conversation, Mr. Warren said to Mr. Greenwood, "whatever I lose I shall look to you for," so you know as well as I do what I will settle for, and Mr. Warren then left us. I heard Mr. Todd say, he was willing to give up all he had made to have the matter settled, and would do all he could to have it settled. I recollect nothing further.

To the thirty-third he says:

I know nothing more.

R. W. MOLINEUX,

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,

August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in the cause.

Attest: J. MUSSEY, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss : City of Boston.

On the thirteenth day of December, in the year of our Lord eighteen hundred and thirty-seven, personally appeared before me, the before named Robert W. Molineux, and after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause in relation to which his deposition is taken, and true answers to make to the interrogatories to him addressed in the commission hereto prefixed, was by me examined on said interrogatories, until the said examined was adjourned to the fifteenth day of said December, when the said examination was continued, until the same was again adjourned to the sixteenth day of said December, when the said examination was completed; the answers of said deponent, as they were given, were written down by me in his presence, and after being carefully read by him, were by him subscribed, in my presence, as and for his deposition.

Taken under the commission aforesaid.

EDW. G. LORING,
Commissioner and Jus. Pacis.

Testimony of John J. Soren.

Answers of John J. Soren, of Roxbury, in the county of Norfolk, teller and clerk, to the interrogatories to said commission annexed, and to him addressed:

In answer to the first he says:

I am acquainted with Otis Daniel, and have been since June, eighteen hundred and thirty-five. At that time, also, I became acquainted with Mr. Todd. I have seen, on one occasion, in Portland, for about an hour, David Wescott and his brother. I do not know that I am acquainted with any other of said defendants.

To the second he says:

I reside in Roxbury. I am, and have been, since eighteen hundred and twenty-five, the teller of the Washington Bank, in Boston. In July, eighteen hundred and thirty-five, on a journey of pleasure, and chiefly with a view of sketching as an artist, I travelled through timber lands in Maine and New Hampshire. I inquired about such lands, and attended to their appearances, though not then with a view of purchasing; this constitutes my only knowledge of new or timber lands in Maine.

To the third he says:

In June, eighteen hundred and thirty-five, Mr. Haskins applied to me at the Washington Bank, at Boston, to become a purchaser in the Ford tract, of the interest held as he said [by] Mr. Todd. Mr. Haskins stated there could be no doubt of the value of the land; that there were sixty millions of good white pine timber in the tract, and certificates proving this were exhibited to me. Whether they were the certificates now exhibited to me by the commissioner

or not, I can't state further than I believe them to be. The one marked A, I think I recognise, the others are marked B, C, D. I agreed to become a purchaser on the full understanding, that it warranted to the purchasers that there were sixty millions of white pine timber on the tract, and that if there were not, it was to be no sale. I afterwards, and after as I think the agreement was signed, and the day before Mr. Haskins and Mr. Todd went together from Portland to Boston, I saw Mr. Todd at Mr. Haskins' store, and I told him I entered into the agreement on the understanding that it was warranted to us there were sixty millions of pine timber on the tract, else the bargain was not to be made, but rescinded. Mr. Todd replied, there could be no doubt of the fact, and that he had certificates from respectable men proving it; the representation made by Mr. Todd and Mr. Haskins as to there being sixty millions of white pine timber on the tract, and that the streams were good and sufficient to get the timber down, were the grounds of my action in entering into the agreement to purchase; other particular representations were made by each of them, in the great quantity of conversation that passed between us, but from the lapse of time, I cannot state them distinctly; the representations made to the plaintiff, I did not hear, and have no personal knowledge of.

To the fourth he says:

I purchased five hundred acres of the Ford tract, and I think on the twenty-ninth day of June, in eighteen hundred and thirty-five, in Boston, of Mr. Todd as agent, with Otis Daniels, Josiah Daniels, Thomas W. Haskins, Mr. Molineux, Thomas G. Wells, James H. Champney, Daniel A. Sigourney, Jonathan A. Richards, and some others, whose names I don't recollect.

To the fifth he says:

I paid one quarter cash, and the rest in three notes, for six hundred and twenty-five dollars each, on interest, payable in one, two, and three years, severally; the cash and notes were delivered to Mr. Tdod as agent.

To the sixth he says:

All that I recollect distinctly as to what led to the purchase by me, I have already stated. I made my purchase as in a timber tract altogether without any relation to settling; although that was mentioned, and it was said the tract was worth three dollars an acre as a settling tract. I should not have purchased in the tract at any price as a mere settling tract. I was induced to make the purchase by the inducements or representations made to me, which I have stated above.

To the seventh he says:

In July, eighteen hundred and thirty-five, I was in Portland, and there in relation to the purchase of the Ford tract, I saw David Wescott and his brother, whose christian name I don't know, and then they conversed with me as if they were owners in this tract or had been before our purchase. Nothing was said as to their having

been owners, but that was taken for granted, and our conversations went on that ground. So it was taken for granted that Mr. Todd held a bond for the tract, or rather, as I understood it, for ten thousand acres of the tract; this is all I know of the defendants being interested in the bond personally, either as to the extent or degree of their interest, except I understood, there were several other owners.

To the eighth he says:

I have already answered this question as fully as I can.

To the ninth he says:

In July, eighteen hundred and thirty-five, I was in Portland, and consulted with Mr. Oliver Hale as to the Ford tract. He said it was not worth a dollar an acre, and advised me to be out of the purchase as soon as possible. I stated what I had heard to Mr. Todd, who said he would call a meeting of those of the company who best knew the land. He called the two Mr. Wescotts mentioned above, and in their presence, and in that of Mr. Todd and myself, Mr. Hale was asked what he knew of the land. Mr. Hale said (being personally present) that he had not been on to the land, but had seen it from a mountain near by, from which he could see there was but a very little timber on the land; and as I recollect, he examined it with a view of becoming interested in the land, and he also said it had never been considered a timber tract; both the Mr. Wescotts stoutly maintained, that they knew the land personally, that it was as represented, and that if the tract turned out otherwise, they pledged their honors to hold harmless myself and others in Boston, who had purchased. Of this I am perfectly certain.

To the tenth he says:

I know nothing more.

JNO. J. SOREN.

COMMONWEALTH OF MASSACHUSETTS,

Suffolk, ss: City of Boston.

On the twenty-seventh day of December, in the year of our Lord, eighteen hundred and thirty-seven, personally appeared before me, the above named John J. Soren, and after being sworn to speak the truth, the whole truth, and nothing but the truth, relative to the cause for which his deposition is taken, and true answers to make to the interrogatories to him proposed, and annexed to the commission hereto prefixed, was examined by me upon said interrogatories, until said examination was adjourned to the twenty-ninth day of said December, when said examination was continued and concluded; the answers of said deponent to said interrogatories were written down by me as they were given in his presence, and the same after being carefully read by him, were by him subscribed in my presence, as and for his deposition. Taken under the commission aforesaid.

EDW. G. LORING,
Commissioner and Jus. Pacis.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8*th*, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Testimony of W. M. True.

Answers of William M. True, of Boston, to the interrogatories to said commission annexed, and to him addressed.

To the first he says:

I have known Otis Daniel about three years; and all the defendants, except Erastus Hayes and Dr. Gooch, I became acquainted with between one and two years since.

To the second he says:

My residence is in Boston; my occupation that of a merchant tailor. I've never been acquainted with, nor had any means of knowing any thing of new lands.

To the third he says:

Mr. Todd made no applications to me—Mr. Thomas W. Haskins did. In June, eighteen hundred and thirty-five, Mr. Haskins stated to me and my partner, Noah K. Skinner, that he had a tract, or part of a tract, of land in Maine, called the Ford tract, to dispose of. He said Mr. Todd stated to him there were sixty millions of pine timber on the tract guarantied, and spruce and hemlock besides, and some cedar. He exhibited to us a map, as representing the land and rivers on it, which were said to be sufficient for running the logs; the inducements to us to purchase was the amount of timber on the land. As to the representations made, and inducements offered to the plaintiff, I know nothing.

To the fourth he says:

We, that is my partner and myself, purchased one thousand acres through Mr. Haskins—the deed was from Mason Greenwood. We took the interest Mr. Sigourney was to have taken, and paid him five hundred dollars bonus. Our purchase was concluded the twenty-ninth day of June, eighteen hundred and thirty-five, in Boston.

To the fifth he says:

We paid the five hundred dollars bonus in cash to Mr. Haskins, who said it was for Mr. Sigourney; then, of the price of the land, we paid to James Todd one-quarter part in cash, and for the residue gave him our notes for one, two, and three years, for twelve hundred and fifty dollars each, with interest.

To the sixth he says:

Of my own knowledge I have no circumstances which I can state, and have not already stated; we purchased for the timber alone, and we should not have purchased into the tract, as a settling tract, at any price.

To the seventh he says:

I've no personal knowledge of any part of said interrogatory.

To the eighth he says:

I was present at no purchase, save our own, excepting that of John Watson, a person in our employ, who, at the same time, and at the same price, and on the same representations and inducements as ourselves, purchased five hundred acres.

To the ninth he says:

I had no conversation with defendants, or any of them, at the time referred to.

To the tenth he says:

I was in Portland in eighteen hundred and thirty-six. I went there, on behalf of the company in Boston, to settle about this land with the company in Portland. Mr. Molineux and Mr. Haskins accompanied me. There we met all the defendants, excepting Erastus Hayes and Dr. Gooch. At one of the meetings Mr. Warren said something to this effect, "we guarantied no particular quantity of timber; we supposed there were sixty millions on the tract, but you were to see for yourselves." Mr. Todd immediately checked him, and said, "no, the sale was based, gentlemen, on the fact that there were sixty millions of pine timber on the tract." This was adhered to by Mr. Todd, and agreed to by most of the people, who uttered no objection to it; it was dissented from by Mr. Warren, so far as denying there was any guaranty. In private conversations Mr. Todd repeatedly assured me that, unless the timber represented was on the tract, the bargain would doubtless be given up—that he was ready to give up his share. WILLIAM M. TRUE.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss: City of Boston.

On the third day of February, in the year of our Lord eighteen hundred and thirty-eight, personally appeared before me the above named William M. True, and after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition is taken, and to make true answers to the interrogatories to him addressed, and to the commission annexed, which is hereto prefixed, he was examined by me upon the interrogatories aforesaid, and his answers thereto were written down by me in his presence; and after being carefully read by him, were by him subscribed in my presence, as and for his deposition taken under the commission aforesaid.

EDW. G. LORING,
Commissioner and Jus. Pacis.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

[REC. LII, J. T. 1843.]—17

Plaintiff's Exhibits.

A.

BINGHAM, *May* 13, 1833.

We, the subscribers, *due* hereby certify that we have this day returned of exploring the Ford tract, and our estimation is, that there is fifty millions, to speak within bounds, of prime pine timber, that is to say, as good as any on the Kennebec waters; and we have also examined the Austin stream, and find it sufficient to run the above timber in the main Kennebec river.

JONAS BROWN,
LUTHER MOORE,
WM. WESCOTT.

B.

PORTLAND, *March* 17, 1835.

This is to certify that, from the knowledge I have of the Ford tract, it is unquestionably one of the best timber tracts upon the Kennebec waters. And I would also state that I have just sold my interest in the Saco tract, being on part of the same stream, at seven dollars fifty cents per acre. JOHN HILL.

C.

BINGHAM, *June* 26, 1835.

I, the subscriber, do hereby certify that I have this day returned from an exploration of the Ford tract, and having been also frequently over the tract in hunting, I am fully satisfied that the estimation made by Jonas Brown, William Wescott, and myself, in May, 1833, will fall short of the quantity of timber, and that the one made this date by Mr. Thomas Chase is within bounds. The reason they fall short was, that they did not explore at that time the part called the L, which we have done this time, and find more timber on it than was anticipated. And I also certify that I have been well acquainted with the stream called the Austin stream for these twenty years past, and consider it good and sufficient to run logs to the main Kennebec river, and the north and south branches of it on the tract sufficient to run them into the main Austin stream with a common freshet, after building one and repairing two dams on the said streams, or even without a freshet.

LUTHER MOORE.

I hereby certify that I agree to the above, and consider it perfectly true. WILLIAM WESCOTT.

D.

BINGHAM, *June* 26, 1835.

I, the subscriber, do hereby certify that I have this day returned from exploring the Ford tract, (in company with R. W. Molineux

and Thomas W. Haskins, of Boston, Massachusetts,) and my estimation is, that there is *not less* than four and a half thousand to the acre, on an average, of *prime pine timber*, as good as any on the Kennebec waters, and one and a half thousand of good spruce timber, (worth as much as pine,) also, to the acre; and have also explored the stream called the Austin stream, which runs through the tract, and do certify that I consider it a good and sufficient stream to run logs to the main Kennebec river.

THOMAS CHASE.

I hereby certify that I was also with Mr. Thomas Chase in exploring the Ford tract, and was fully satisfied that the estimation is within bounds, and the quality of the timber is the *first*, and the stream is as represented, and that it may be made, with very little expense, so as to run logs even without a freshet.

JAMES TODD.

E.

Articles of agreement made this eighteenth day of June, A. D. eighteen hundred and thirty-five, by and between James Todd, of Portland, in the State of Maine, of the one part, and Otis Daniell, Josiah Daniell, Robert W. Molineux, E. F. Messinger, Jonathan A. Richards, and James H. Champney, and Barnum Field, all of Boston, in the county of Suffolk and Commonwealth of Massachusetts, and Daniel A. Sigourney and John J. Soren, of Roxbury, in the county of Norfolk and Commonwealth of Massachusetts, of the other part.

The said Todd, in consideration of the agreements herein contained of said parties of the second part, hereby agrees with them respectively to sell and convey to them, by good and sufficient deeds, with warranty and a good and indefeasible title in fee simple, ten undivided sixteenth parts of a tract of land situated in township number two, second range, Bingham Kennebec purchase, east of Kennebec river, in Somerset county, State of Maine, containing sixteen thousand acres, called the Ford tract, to be conveyed to said parties of the second part, as follows: three undivided sixteenth parts to said Otis Daniell, two undivided sixteenth parts to said Josiah Daniell, one undivided sixteenth part to said Molineux and Messinger, two undivided sixteenth parts to said Daniel A. Sigourney and Jonathan A. Richards, one undivided sixteenth part to John J. Soren and James H. Champney, and one undivided sixteenth part to said Barnum Field, the said parties of the second part paying for their purchase their respective proportions of the sum of fifty thousand dollars, to be paid as follows: one quarter part in cash, and the remainder one third in one year, one third in two years, and one third in three years, with interest annually, secured by their respective notes and mortgages on the premises; and the said premises are to be conveyed to said parties of the second

part, in the proportions above mentioned, at any time on demand within sixteen days from the date of these presents; which time is allowed to said parties of the second part to explore said tract.

And the said parties of the second part, in consideration of said Todd's agreement, hereby agree with said Todd, to purchase and pay for their respective parts of said tract as before mentioned, and to give their notes and mortgages as before mentioned; and if they do not complete the purchase within the said term of sixteen days, they will respectively forfeit and pay to said Todd, their respective parts of the sum of three thousand dollars: Provided nevertheless, that said parties of the second part, shall be under no obligation to take said land, or to pay therefor, unless said Ford tract contains sixty millions of pine timber, and a stream runs through said tract, which will, with an ordinary freshet, carry logs without difficulty from said tract to Kennebec river. In case said tract does not contain sixty millions of pine timber, and such a stream as is mentioned above, said Todd hereby agrees with said parties of the second part, to pay the expense of one person to be sent from Boston to examine said tract; and, also, whatever may be paid to one other suitable person for exploring said tract, for the time he is on the tract. It is understood, if said parties of the second part, or their agent, notify said Todd of their agreement to take the said premises, at any time within sixteen days, they shall be allowed till July ninth, to make the payments and exchange the papers.

In witness whereof, the said parties have hereunto interchangeably set their hands and seals.

[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]
[L. S.]

Signed, sealed, and delivered, in presence of—(three lines interlined on this page before signing.)

S. E. Sewall, witness to Jas. Todd and Barnum Field.
Thos. W. Haskins, to all the remainder.

E. G. L., *Commissioner.*

Maine District, *ss:*

Circuit Court, Clerk's Office,
August 25, 1837.

[L. S.] Exhibits filed to accompany interrogatories, filed this day by plaintiff, in the case of Otis Daniell in equity *vs.* William C. Mitchell and others.

Attest: J. MUSSEY, *Clerk.*

O.—E. G. L.

BOSTON, *May* 27, 1836.

Mr. TODD:

DR. SIR,—As the time is fast approaching when it was proposed to send on men to explore and survey the Ford tract, it is necessary, if possible, to fix upon some day when all parties can start, so that no time need be lost in waiting for each other. We have written to Mr. R. Gibson to ascertain at what time he will be able to go on, and are expecting an answer every day; and as it was proposed that each party should send a surveyor, as well as the gentlemen who went on before, it will be necessary to have some understanding as to the time of starting. You will be able to ascertain Mr. Gibson's answer to us, by calling at his house.

As we have decided upon Mr. Gibson as our surveyor, and shall consequently have to wait his movements, (unless, indeed, his business should detain him longer than was anticipated,) we should like, if it will be as convenient for you, to have his decision as to the time of his starting, fix the time for both parties.

If you will inform us as to your arrangements, we will be obliged to you, and shall probably be able to inform you of Mr. Gibson's decision by that time.

In regard to making this survey a final one, and the basis of all future negotiations, will it be necessary to sign any documents, or will it suffice to leave it without making it binding by any legal instrument?

I propose these questions for your consideration, being desirous of doing, in behalf of the company here, what will be right and proper in the case.

Please write as soon as possible.

Respectfully yours,

WM. M. TRUE, *for the Company.*

Mr. Todd, and the company interested with him, have the most perfect confidence of the truth of every statement made by them in regard to the Ford tract, and are confident they have acted with the purest good faith in the business. They are willing, however, to have a thorough exploration of the tract, made by men of integrity and competent knowledge of such business, for the purpose of ascertaining the facts beyond all question. They will agree on a time, and send men at their own expense, to accompany men sent by the Boston company at their own expense, to ascertain the true state of things, in order that each company may understand what are their respective obligations and duties towards each other, according to the established principles of justice and equity.

(Signed by) Mr. CODMAN.

In presence of T. W. HASKINS.

And this proposed by the company, also in my presence, consisting of Messrs. I. Waterhouse, T. Warren, Wm. C. Mitchell, E. Hayes, D. Wescott, Wm. Wescott, J. Todd.

T. W. HASKINS.

Y.—(*Copy.*)

Know all men by these presents, that I, Otis Daniell of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, merchant, for a full and valuable consideration to me paid by Thomas W. Haskins, of said Boston, trader, do hereby release and forever discharge the said Haskins from all claims and demands of every kind and nature which have arisen, or may arise, from out of a suit in equity now pending in the circuit court of the United States for the district of Maine, between me, the said Daniel and William C. Mitchell, and others, and all claims and demands of every kind and nature which have arisen, or may arise, from or out of the land mentioned in the bill in said suit, called and known as the Ford tract, and all claims and demands of every kind and nature which have arisen, or may arise, from or out of the purchase, or any contract respecting the purchase, of any part of said Ford tract.

In witness whereof, I have herewith set my hand and seal, this seventh day of August, in the year eighteen hundred thirty-seven. [L. s.]

OTIS DANIELL.

In the presence of S. J. RODGERS.

Z.

This agreement made and entered into this twenty-second day of July, A. D. 1835, by and between Erastus Hayes, Israel Waterhouse, David and William Wescott, Thomas Warren, and William C. Mitchell, all of Portland, in the county of Cumberland, and State of Maine, and William B. Gooch, of North Yarmouth, in said county, witnesseth: That whereas one Mason Greenwood, of said Portland, on the twenty-ninth day of June last, conveyed to Otis Daniell and others five undivided eighth parts of a certain tract of land lying in township No. two, in the second range, in Bingham's Kennebec purchase, in the county of Somerset, bounded and described as in said deed is fully set forth, and on the same received from his said grantees certain notes in payment of their respective shares of the consideration thereof, and also a mortgage of the same, each mortgaging his undivided proportion of the premises conveyed; and whereas, also, the above named parties were interested in said land, though the fee thereof was in said Greenwood alone, and have, consequently, become the holders of said notes, and interested or accountable as the same, in the proportions following, viz: the said Erastus Hayes to the amount of $6,562 50; the said Waterhouse, $4,687 50; the said David and William Wescott, $7,500;

the said Warren, $3,750; the said Gooch, $3,750; and the said Mitchell, $11,250.

Now, therefore, in consideration of the premises, the said parties have agreed, and do hereby agree and promise to and with each other, that in case any of the promissors of said notes, who are all specifically enumerated in the deeds aforesaid, which may be referred to, should become insolvent before any or all of said notes should become payable, so that any loss accrues on the same, or in case of any loss on the same arising from any cause other than the negligence of the holder or holders thereof, that then the said loss shall be borne by all the abovenamed parties in the proportion of their interest in the same as above set forth. And the holder of the note or notes, the promissors of which shall become insolvent *as* as aforesaid, or on which there may be any loss as aforesaid, may have his right of a remedy for contribution against any one of said parties refusing to pay his said proportion of said loss after notice and request to pay the same either by action of assumpsit or on this agreement.

In witness whereof, we the said parties have hereunto interchangeably set their hands and seals on the day and year first abovementioned.

ERASTUS HAYES. [L. S.]
DAVID WESCOTT. [L. S.]
WILLIAM WESCOTT. [L. S.]
THOS. WARREN. [L. S.]
I. WATERHOUSE. [L. S.]
WILLIAM C. MITCHELL. [L. S.]
[L. S.]
[L. S.]

In presence of ABRAM T. WHITTIER,
Witness to E. Hayes, D. Wescott, William Wescott, and W. C. Mitchell.

Received, January 1, 1836, and recorded from the original.
Att. SAMUEL SMALL, *Register.*

A true copy as appears of record, book 143, page 409.
Attest: SAMUEL SMALL, *Register.*

[*For Map, see Original.*]

do you know respecting the same ; and were or not any means used to cause the said Haskins to report that there were 60 millions, or a great quantity of good pine timber thereon ? If yea, what means were used, and by whom ? Set forth and describe the same.

12th. Are you or not acquainted with the lands adjoining said tract ? If yea, do such adjoining lands, or any of them, contain pine timber, or did they in June, 1835 ? If yea, how near to said Ford tract ? Is it more or less compact than, and its quality superior or inferior to that, on the Ford tract ?

13th. Are you or not acquainted with Luther Moore, and with Jonas Brown, Thomas Chase, John Hill, named in the plaintiff's bill of complaint ? If yea, are their respective certificates, as to the timber upon a tract of land, in any degree to be relied on ? Were they entitled to any regard, and what, in June, 1835 ? Would you then have given, or would you now give, any weight to such their respective certificates ? State fully as to the certificate of each by itself, and distinguish his certificate from the others.

14th. Have you or not any knowledge respecting a purchase by the plaintiff or others, in Boston, of a part of said tract ? If yea, state what you know of the same, and of the means by which the plaintiff, or said others, were induced to make such purchase.

15th. Do you or not know what person or persons were interested in said tract, or in the sale thereof, on the 15th of June, 1835 ? If yea, state who they were, what was their interest, how acquired, and how held ; and did they, or any of them, and who, claim or receive any part of the money or notes paid or given by the plaintiff and others, in Boston, as purchasers of a part of said tract in June, 1835 ?

16th. Did you or not hear the defendants, or either of them, and which, in the month of June, or July, 1835, say any thing respecting said Ford tract, or of the sale of any part thereof, to the plaintiff or others, in Boston, or respecting one Thomas W. Haskins having been caused or induced to think that there was a great quantity of timber upon said tract, or so to report to the plaintiff or others, or did the defendants, or either of them, express any exultation at, or boast of, their success in selling said tract, or any part thereof, to the plaintiff or others, in Boston ?

17th. Do you know any other matters or things touching the matters in question in this cause which may tend to the benefit or advantage of the said complainant therein ? If yea, set forth the same, and all the circumstances and particulars thereof, fully and at large, according to the best of your knowledge, and remembrance, and belief, as if you had been thereto particularly interrogated.

P. SPRAGUE and C. S. DAVEIS,
Solicitors for Plaintiff.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 25, 1837.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

August 28, 1837. Served an attested copy of the foregoing upon William P. Preble, Esq., solicitor of record for the defendants, with notice to file cross interrogatories if he should see fit, on or before the eleventh day of September then next, the day on which a commission would issue herein agreeably to the rules.

Attest: J. MUSSEY, *Clerk.*

A true copy.

Attest: J. MUSSEY, *Clerk.*

Testimony of E. Thompson.

The answers of said Ebenezer Thompson to the interrogatories to said commission annexed.

To the *first* he says:

I know Otis Daniell, and have known him for about six months. William C. Mitchell I had an intercourse with about two years ago. I do not know that I am acquainted with any of the other defendants now living.

To the *second* he says:

I reside in Boston; my occupation has been of keeping a public house. I now keep a boarding-house in Somerset Place. I was brought up among new and timber lands. In the course of two years past I have done a good deal of exploring in eastern lands; further than this I have had no experience, but I grew up on new and timber lands, and have always considered myself a judge of timber and land, as to quality and value. I have been acquainted with new land in New York, New Hampshire, Vermont, and Maine.

To the *third* he says:

I have surveyed the Ford tract twice—once in April, 1836, the second time in June following, as I think it was. I went at the request of Mr. Haskins and William True, for the purpose of exploring the tract, to ascertain the quantity of pine timber on the tract—of spruce, and cedar—and to judge what portion of the land would be good for settling land. I was directed to procure some one who was a good judge, and used to exploring, to accompany me, and a pilot, if it should be needful. I employed Captain Bolter, of Moscow, as explorer—he was recommended as a suitable man—and I employed Mr. Moore as a pilot, and entered on the land about the seventh of April. We examined the trees by travelling on the land, and climbing, and counting; Captain Bolter climbed and counted—I did not climb. We were thus engaged, I think, eight or nine days, and we went over two-thirds of the tract. We went on to the

L part, and found that better timbered than the other. We found there an old logging camp, which, from its appearance and decay, we judged had been built about eight years. From the stumps we concluded the best timber had been cut down; and, from the undergrowth in the old logging roads, we concluded the land had been logged upon about eight years before. All over the land we found logging camps more recently built, and saw the land had been logged upon. Before going on to the tract we went, by the suggestion of the guide, to a rising ground near the tract to get a view of it; from there we saw the L part, and it looked as if there might be sound timber on it; as it was also rising ground, it showed to advantage. When we first entered the land, we travelled over it before we began to count; there was a tract burned over, which had nothing on it but undergrowth, and some old dry trees, and this tract was from five to ten hundred acres; the land, every where, we found poorly timbered; so much so that I should not have called it a timber tract. On finding this, I told Captain Bolter that I should not count, or calculate, how many of the trees on any tract were rotten; that a few hundred thousand feet more would make no difference in the estimate or procedure of my employers, and therefore I should make my estimate as large, on all occasions, as I reasonably and properly could, noting only, generally, whether there was more or less of rotten timber; and on this plan we acted. We counted over what we considered two-thirds of the whole Ford tract, and we counted fourteen hundred and fifteen trees; and these we estimated at eleven hundred and forty-nine thousand feet. The northwestern part we did not travel over—we had a view of it; there was some pine on it—not much, however. Of this I took the opinion of Captain Bolter and the pilot, and they estimated that at about five hundred thousand feet; they said they were well acquainted with that portion of the land. As we were coming out, we passed a tract in which Captain Bolter climbed and counted; it was stormy, and we were leaving the tract, and so did not count this so leisurely as the rest; but we calculated there were about one hundred and thirty trees, and, as they were rather larger than the others generally, we estimated them at a thousand feet apiece. In counting on the tract, we always counted every thing that was large enough to make a saw-log of; amongst the timber there was much rotten timber—the best timber had been culled out. We found cut, and lying in the streams and about it, about eight hundred thousand feet—this was cut the winter before, after the land was purchased; so that all the timber abovementioned, we estimated at twenty-five hundred and ninety-five thousand feet of lumber, superficial board measure, inch stuff. We found some spruce, not much—a very small portion—and we did not estimate its quantity by counting the trees. We saw some cedar, but it was so placed the expense of getting it out would be more than its worth; we were only directed to ascertain the quantity, generally, of spruce and cedar, and not to count the

trees. Mr. Moore and Captain Bolter were the only persons who accompanied me. After this, my report was made to my employers, and I was requested by them to go on to the land again, because the buyers said I must have been on to the wrong land. It was then agreed that two of the buyers, and two of the sellers, with such explorers as they chose, should again explore the land. We went on the land, Mr. Molyneux and Mr. True went on the part of the purchasers, and Mr. Wescott, and I believe Mr. Mitchell, on the part of the sellers—these took their explorer from Portland; Mr. Molyneux and Mr. True had two explorers. I went only to ascertain that I had been on the right land before; I went at the request of Mr. True. Mr. Spalding, who originally surveyed this tract, went also to run the lines, and show where they were; this he did so far as I went, and marked the lines over. I then found I had, on our first exploration, been one range of lots to the eastward of the true line, so that we counted in some trees we should not have done, but not many. At this time, while I was with the party, the trees were not counted. I ascertained I had been on the right land before, and had not been mistaken in my first exploration. I was with the party three days; we went over the L part, and the east part; no estimate was made of the timber while I was there; originally it was expected by the purchasers, as they told me the explorers should make their estimates together; but this was objected by the sellers, and their explorers were directed to keep their estimates to themselves. I made minutes of my first exploration, to which I have now referred in testifying.

To the *fourth* he says:

I have stated above all the times I've been on the land.

To the *fifth* he says:

I knew nothing of the Ford tract till April, eighteen hundred thirty-six, and have stated my means of knowing it then. The quantity of timber on the tract I have stated; as to its value for market, considering that the timber is scattering, that the streams to get it down to the Austin river are small and risky, I should not consider the pine, or spruce, or cedar, as of any value for market, or likely to pay the expense of getting them there. I believe the timber already cut and hauled won't pay its cost.

To the *sixth* he says:

I have answered this as fully as I can.

To the *seventh* he says:

Except on the L part, there is not a good berth for a team on the tract. At the L part there is a good berth for one or two teams for a winter, but there is no stream by which it can be well got out. From what I saw I thought the land had been lumbered on, and the L part earlier than the other, and the best timber had been cut off. I judge of the tract by those parts I saw, and the information given me of the rest.

To the *eighth* he says:

I judged there might be from two to three thousand acres of good soil, some of which laid pretty well, and had a good growth of hard wood timber, but there were no roads, and no chance of getting it; and I concluded it would not be very valuable as a settling tract—a great portion of the tract was wet, cold, stoney land, unfit for cultivation. I do not think that, as a settling tract, it was of any value at all.

To the *ninth* he says:

I cannot think that the tract is worth any thing, taking into consideration the taxes, &c.

To the *tenth* he says:

I have no knowledge.

To the *eleventh:*

I have no knowledge.

To the *twelfth* he says:

One piece of land, originally taken from the Ford tract, and now belonging to the Saco tract. I went across this, and it appeared to be well timbered; the other land adjoining the Ford tract had but very little pine timber.

To the *thirteenth* he says:

I knew only Luther Moore, and I knew him only from having used him as a guide, as stated above, and I know nothing of his character, and therefore cannot determine the value of his certificate.

To the *fourteenth* he says:

I have no knowledge.

To the *fifteenth* he says:

I have no knowledge.

To the *sixteenth* he says:

I did not know the defendants till April, 1836. I then called on Mitchell and Wescott, and the former said the land had been explored by them enough, and the timber stated was there, and he refused to be at any expense for any further exploration. I heard nothing more.

To the *seventeenth* he says:

This township lies badly—there are none but the logging roads—the Austin river is not a good stream for running logs—it is rocky and rough, and has many falls, and requires a larger freshet than is usual—this I judged from seeing logs cut and lying in the stream, which must have been there for years—the small streams running down to Austin river are very small and insufficient—the timber is very scanty, and not enough for the use of the town, as a settling town, and as a timber tract or settling tract, I think it of no value.

EBEN'R THOMPSON.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

On the twenty-third day of July, in the year of our Lord eighteen hundred and thirty-eight, personally appeared before me, the

above named deponent, who, after being sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which his deposition is taken, was examined by me upon the interrogatories annexed to the commission hereto prefixed, and his answers thereto being written down by me in his presence, and read to him, were by him subscribed as and for his deposition.

EDW. G. LORING,
Commissioner.

Plaintiff's Commission.

UNITED STATES OF AMERICA,
MAINE DISTRICT, *ss: First Circuit.*

[L. S.] The Circuit Court of the United States begun and holden at Portland, within and for the Maine District, on the first day of May, in the year of our Lord one thousand eight hundred and thirty-seven.

To John S. Tenney of Norridgewock, and David Bronson of Anson, in said district, Esquires, or to either of them, respectively:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Ebenezer Thompson, Moses Chamberlain, Wadsworth Boulter, Andores Killgore, Levi G. Fletcher, Joseph L. Lord, Joseph Spaulding, O. Littlefield, Abner Coburn, Oliver Hale, jun., witnesses, to be produced and examined in behalf of the plaintiff, to be used in a certain cause now pending in said court, wherein Otis Daniell is plaintiff in equity, against William C. Mitchell and others, defendants. And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid, to be brought before you, and each witness while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed, to return, together with this commission, and your doings herein endorsed, sealed and directed to the circuit court aforesaid, next to be holden at Wiscasset on the second day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this nineteenth day of September, in the year of our Lord one thousand eight hundred and thirty-seven.

J. MUSSEY, *Clerk.*

SOMERSETT, *ss:*

March 31, 1838.

Pursuant to the authority to me by the within commission, I have taken the depositions of Joseph Spaulding in answer to the inter-

rogatories annexed to this commission, Moses Chamberlain, Joseph L. Lord, Wadsworth Boulter, and Ammi Z. Littlefield, and Abner Coburn, on schedules marked "A"—"B"—"C"—"D"—"E"—and "F," which are annexed hereto, and now make return of the same depositions, commission, and interrogatories, to the Circuit Court of the United States to be begun and holden at Portland, in and for the first circuit, and to be used as evidence in a cause there pending, in which Otis Daniel is plaintiff, and William C. Mitchell and als., are defendants; said depositions were taken at the request of the plaintiff.

Given under my hand, at Norridgewock, this thirty-first day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

JOHN S. TENNEY,
Justice of the Peace.

"A."

Testimony of J. Spaulding.

Deposition of Joseph Spaulding, Esquire, of Carratunk, in the county of Somerset, a witness, produced and sworn and examined in a suit pending in the Circuit Court of the United States, wherein Otis Daniel is plaintiff in equity, against William C. Mitchell and als., defendants; the deposition taken before John S. Tenney, one of the Justices of the Peace in and for the county of Somerset, in virtue of the annexed commission.

To the interrogatories propounded by the plaintiff, the witness answers as follows, to wit:

1st. I have some knowledge of William C. Mitchell, having once seen him in 1836. I do not know either of the other parties that I am aware of.

2d. I reside in a place called Carratunk, nine miles below the forks of Kennebec river. I have been engaged as a farmer. And for several of the last years, I have been much engaged in the surveying, exploring, purchasing, and selling timber and other lands. In the latter business, I have had experience every year for the last ten or twelve years. I have been engaged in cutting and hauling lumber every winter since 1829, either directly or indirectly.

3d. In the year 1828 I surveyed a part of the Ford tract, and in 1831, I think, I completed the survey of the whole tract. I have been over the land, but never with the view of making an accurate exploration. In 1828 I run out the "L" part so called, into lots of about one hundred acres each. And in 1831 I ran the exterior lines. In 1836 I received a letter from William C. Mitchell to come to Bingham and meet him and others, and thence to go on to the Ford tract. I accordingly went to Bingham, met Mitchell and others. I think a Mr. True was among them, and Mr. Mollineux. William Wescott was there. Thomas Chase and Luther Moore

went as pilots. Moses Chamberlain was with us. Wescott and others wished Chase and Moore to find a camping place, and from that they would be able to find a certain tract of timber, and all they wanted of me was to inform them whether that tract of timber was or not on the Ford tract. We went on to the tract, but the camp could not be found, nor the tract of timber sought after. I went and showed them the corners of the Ford tract and the lines. I made no exploration, but returned, leaving the most of the company on the tract. I was on the tract again last summer, I think in June, at the request of Thomas W. Haskins. He wished to know about the same camp and tract of timber before sought after. We found the camp, but not the tract of timber. Haskins was with me, and Mr. Mollineux, Luther Moore, Thomas Chase, Moses Chamberlain, and Wadsworth Boulter, were also present. The camp was on the Ford tract, and from the account given by all at the time, I had no doubt the tract of timber sought after, but not found, was also on the tract. It was said on the same occasion there was another tract of timber, which was represented to be on the Ford tract at the time of the purchase made by Haskins and als. This tract of timber we found, but it was not on the Ford tract, but on the Coburn reserve, so called.

4th. I did not explore or survey, but went on to the Ford tract at the request of William C. Mitchell, in company with Mollineux, Wescott, and True. This was in June, 1836, and at the time I met Mitchell and others at Bingham, as described in the answer to the next preceding interrogatory, in which answer I have described what then took place.

5th. I am acquainted with the Ford tract. I first knew it in 1828, and the means of knowing the value and the timber thereon are described in my answer to the third interrogatory. I do not know the quantity of good pine timber suitable to be sawed into boards, which it contained in June, 1835, nor the quantity now on the tract; nor do I know how much timber is worth cutting and conveying to market, or the value thereof.

6th. I do not know.

7th. I know of no good berths of timber for a team on the tract. I do not know what the facilities are for getting the timber to market. I do not know whether it has or not been much operated upon.

8th. I cannot tell. I never was over much settling land upon the tract.

9th. I do not know the value, but think the value, whatever it might have been, was in pine timber.

10th. I suppose the tract once belonged to the Bingham heirs; farther I do not know.

11th. I have no knowledge of the subject matter of this interrogatory.

12th. I have some knowledge of the lands on the south, the west, and the north. There was pine timber on all these sides, but the quantity or quality I do not know. On the south there was very little pine timber. On the east I could see none.

13th. I am acquainted with Luther Moore, Thomas Chase and Jonas Brown. I should not regard in the least any certificate of Moore or Chase. I have confidence in the intention of Brown to give a true certificate, but I know very little of his judgment in reference to timber lands. I know nothing of John Hill.

14th, 15th, 16th, and 17th. I have no knowledge of the facts referred to in these interrogatories, and I have nothing farther to state.

JOSEPH SPAULDING.

SOMERSET, *ss :*

March 31, 1838, the aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition and answers foregoing subscribed by him, and taken at the request of Otis Daniell, and to be used in a cause now pending, and mentioned in the annexed commission.

Before me, JOHN S. TENNEY,
Justice of the Peace.

"B."

Testimony of M. Chamberlain.

Deposition of Moses Chamberlain, Esquire, of Moscow, in the county of Somerset, a witness produced, and sworn, and examined, in a suit pending in the Circuit Court of the United States, wherein Otis Daniell is plaintiff in Equity, against William C. Mitchell and als., defendants. The deposition taken before me, John S. Tenney, one of the Justices of the Peace in and for the county of Somerset, in virtue of the annexed commission.

To the Interrogatories propounded by the plaintiff, the witness answers as follows, to wit:

1st. I do not know the plaintiff, Otis Daniell; but I do know William C. Mitchell; and I first became acquainted with him in the summer of 1836.

2d. I reside in Moscow, in the county of Somerset; my occupation is that of a farmer. I have been some engaged in the lumbering business. I have had some acquaintance with new and timber lands; and I have had some experience in exploring the same. I have hauled timber with the assistance of others, between two and three million feet board measure. I have scaled between two and three million feet of logs board measure, and I have been engaged in exploring timber lands between two and three months, and I have lumbered three winters.

3d. I assisted Joseph Spaulding, William C. Mitchell, Col. Kilgore, a Mr. Mollineux, a Mr. Libby, Luther Moor, Aaron Moor, and William Wescott, in the summer of 1836, in exploring the Ford tract, so called. I was on the same tract again last June or July, and made an exploration in company with Thomas W. Haskins, said Mollineux, Luther Moore, Joseph Spaulding, and Wadsworth Boulter, and I do not know but others. The first time, I went at the request of said Mollineux and a Mr. True; the last time, I went at the request of Thomas W. Haskins. I went, the first time, in order to estimate the timber on the tract; the last time, I went for the purpose of showing said Haskins a lot of timber which Luther Moore showed me, in the fall of 1835, as being on the Ford tract, but which, I had been informed, was not on said tract, and which I found, in tracing the lines, was principally on another tract; the last time I went over the tract, but not so particularly as I did the first time. The first time, we travelled over the tract five days, examined the timber, after ascertaining where it was, by climbing trees, and noted the amount.

4th. I have answered this interrogatory in my answer to the one next preceding.

5th. I have been acquainted with the Ford tract in the manner described in my preceding answers. I cannot tell what good timber there was on said tract in June, 1835, as I had not then examined it; but I think there was in the summer of 1836, when I made the first exploration, thirty-five hundred thousand board measure, estimated as merchantable. Such then was my estimation. There had been timber taken from the tract the preceding winter, so far as I could judge from the examination I made, but I have no means of knowing the quantity taken off. I think there is now on the tract, thirty-four hundred thousand feet, the whole of which, I think, worth cutting and conveying to market; and I think the timber cannot exceed in value one dollar a thousand, but it may be worth that and possibly more.

6th. There was no spruce or cedar on said tract in June, 1835, of any value. There was some spruce and considerable cedar, but so situated as to be without value.

7th. The facilities for getting said timber to market are not good. The timber is scattering, and does not stand thick enough in any place to make a good berth for a team. The stream down which the timber must be run is very bad for running; perhaps, no stream in the State, through which timber is floated, is so difficult. I know but little as to the operations upon the tract, but there have been none since the summer of 1836, excepting some trespasses.

8th. I think the land is not valuable for settling land. There is considerable hard wood land, and might once have been called good settling land; but I think an owner living in Massachusetts would not derive any benefit in attempting to sell it in lots to settlers.

9th. I think the tract, in the summer of 1836, worth thirty-five hundred dollars, and that it is now worth thirty-four hundred dol-

lars. How it was in value prior to the summer of 1836, I cannot tell, except from hearsay, as I do not know the quantity of timber taken off in 1836 in the winter. The value of the tract was and is in the timber thereon.

10th. The tract was within the limits of Bingham's purchase of one million acres. By whom or to whom sold, I have no knowledge; neither the price for which it was sold.

11th. I have no knowledge of any facts, concerning which inquiry is made in this interrogatory.

12th. I am some acquainted with the lands on the west. On the south I am some acquainted. I know something about the land on the north of the Ford tract. The land on the south contained some pine timber in 1835, in June, but do not know how much. On the west, the land was covered with timber, I think about as the Ford tract. On the north, the land was well timbered. The township was as a whole well covered with good timber, and the timber in some places came to the line and over the line of the Ford tract. I explored that township, the one north of the Ford tract, and I estimated the amount of timber at thirty-five million feet, merchantable, board measure. This was, I think, over six years ago. The timber on the township north of the Ford tract is much more compact than on that tract, and in quality about the same.

13th. I am acquainted well with Luther Moore and Thomas Chase. I have seen Brown, but am not particularly acquainted with him. John Hill I do not know. I would give no credit whatever to the certificate of Luther Moore, nor to that of Thomas Chase. As to the certificates of the other two, I can say nothing.

14th. I have no knowledge of the subject.

15th. I cannot answer the interrogatory, as I know nothing.

16th. I did not hear any such thing.

17th. I have nothing more to add.

MOSES CHAMBERLAIN.

SOMERSET, *ss:*

March 31, 1838, the aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition and answers foregoing subscribed by him, and taken at the request of Otis Daniell, and to be used in the cause mentioned in the annexed commission.

Before me, JOHN S. TENNEY,
Justice of the Peace.

"C."

Testimony of J. L. Lord.

Deposition of Joseph L. Lord, Esquire, of Brighton, in the county of Somerset, a witness, produced and sworn and examined in a suit pending in the Circuit Court of the United States, wherein

Otis Daniell is plaintiff in equity, against William C. Mitchell & als., defendants; the deposition taken before me, John S. Tenney, one of the justices of the peace in and for the county of Somerset, in virtue of the annexed commission.

To the interrogatories propounded by the plaintiff the witness answers as follows, to wit:

1st. I am some acquainted with William C. Mitchell. I first saw him last July. I am not aware of knowing the other party.

2d. I live in Brighton, in the county of Somerset. My occupation is and has been that of a farmer. I have been engaged in hauling lumber in some manner for eighteen winters. I have had some acquaintance with new and timber lands. I have some experience in looking out chances to put in teams, but have had none as an explorer. I do not profess to have such a knowledge as to be fully competent to judge of the quantity and quality of timber on lands, or of the value of the lands; though I am not wholly ignorant of the same.

3d. I have often been over the Ford tract, with the view to find chances to put on teams; but I never explored the tract or made any estimation of the timber thereon. I went over it in the falls of 1833, 1834, and 1835, and put in two teams in each winter succeeding those falls. The first year I went on under a contract made by Jonas Brown, as the agent of William Wescott, the brother of said Wescott, Joseph E. Foxcroft, Capt. Davis, and some others. The second year I went on under a contract with Foxcroft, who acted for himself and the same company, for whom I labored the first year. The next winter I went on to the tract under a contract with Wadsworth Boulter, who acted for Thomas W. Haskins.

4th. I did not survey, explore, or go on to the tract for or with either of those individuals.

5th. I am acquainted with the Ford tract in the manner described in the answer to the third interrogatory. I first knew the tract fourteen or fifteen years ago, and I occasionally went over it till I commenced work upon it as I have before described. In June, 1835, I think from the knowledge I had of the tract, which was not from an actual estimation, it did not contain over three million feet of timber suitable to be sawed into boards; and I think it does not now contain over two millions feet of the same description of timber; which amount, I think, is worth cutting and conveying to market; and I think the value of such timber does not exceed seventy-five cents a thousand as it stands.

6th. There is but a small quantity of spruce; there is some cedar. I think the spruce and cedar of very little value in June, 1835, or at this time.

7th. I think the facilities for getting the timber to market are very small. It must be hauled, on an average, two miles; it is very much scattered; no good berth for a team on the tract; and the stream to

which it must be hauled, and through which it must be floated to market, is a difficult one to drive. The tract has been much operated upon, and the good timber generally taken off. The best timber was taken away in the winter of 1834; the next winter the best of the remaining timber was cut and hauled; and the third winter we went to the best chances; left the trees most scattering, and selected the best timber remaining. This was done for the benefit of the owners, and at the request of their agent, and for our own advantage.

8th. There may be some particular lots of value, but as a whole I think it destitute of value, especially to an owner in Massachusetts, for settling. I would not take a deed and be obliged to pay taxes upon it if I could receive the same without consideration, provided I should be obliged to keep it ten years.

9th. I think the tract was, in June, 1835, and at this time, worth not exceeding twenty-five hundred dollars, and this consisted in the timber on the land.

10th. I have always supposed that the land belonged to the Bingham heirs. I do not personally know by whom, or to whom, it was sold, nor for what price.

11th. I have no knowledge of the facts referred to in this interrogatory.

12th. I am acquainted with the lands on the south, west, and north of the Ford tract. On the south and west there is pine timber, and situated about as on the Ford tract, and about the quantity and quality on the same quantity of land. On the north the township is well covered with good pine timber; the timber comes to the line of the Ford tract; it is much more compact than on the Ford tract, and is of much superior quality. The township north of the Ford tract has not been culled at all, whereas that had been much culled for rift timber before any operation upon it.

13th. I have seen Luther Moore, Thomas Chase, and Jonas Brown, but I do not know what credit is due to their certificates respecting timber and timber lands. John Hill I never knew.

14th, 15th, 16th, and 17th. I have no knowledge touching the matters referred to in these interrogatories.

JOSEPH L. LORD.

SOMERSET, *ss:*

March 31, 1838.

The aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition and answers foregoing, subscribed by him, and taken at the request of Otis Daniell, and to be used in the cause mentioned in the annexed commission.

Before me, JOHN S. TENNEY,
Justice of the Peace.

"D."

Testimony of W. Boulter.

Deposition of Wadsworth Boulter, of Moscow, yeoman, a witness produced, and sworn, and examined, in a suit pending in the Circuit Court of the United States, wherein Otis Daniell is plaintiff in equity, against William C. Mitchell & als., defendants; the deposition taken before me, John S. Tenney, one of the justices of the peace in and for the county of Somerset, in virtue of the annexed commission.

To the interrogatories propounded by the plaintiff the witness answers as follows, to wit:

1st. I know William C. Mitchell. I first became acquainted with him in the fall of 1835; and I am not aware of knowing either of the others who are parties.

2d. I reside in Moscow. I am now a farmer. I followed the business of lumbering, in the town of Standish, eight or nine years. I am some acquainted with new and timber lands, and have had some experience in exploring the same. I have explored several tracts of timber land in Standish, and some in Fryeburgh. I have explored on the Saco tract, and on the Ford tract; and I feel competent to judge of the quantity, quality, and value of the timber, standing on a tract of land.

3d. In the fall of 1835 I went over the Ford tract, with the view to find chances to put on teams, under a contract with Thomas W. Haskins. I did not estimate, at that time, the amount of timber on the tract. I put on that season five teams, consisting of from four to six oxen each. In March or April, 1836, I explored the tract in company with Ebenezer Thompson, of Boston, for the purpose of ascertaining the amount of timber thereon. We were upon the land at that time eight days. Luther Moore went with us as a pilot. I went at the request of said Haskins. We ascertained the quantity by climbing trees, in order to count the number of trees, and then examined the trees to determine the quality, and the amount in each—noting the amount of sound timber as we estimated it.

4th. I did not go with the persons mentioned in this interrogatory. I went for said Haskins; but not on account of either of the others; and I have stated what took place, when I did go, in the interrogatory next preceding.

5th. I am acquainted with the Ford tract. I have known the same since the fall of 1835. The means which I have had of ascertaining its value, and of the timber thereon, are, the exploration made as aforesaid, together with having lumbered on the same in the winter of 1836, as mentioned in my answer to the third interrogatory. I presume no timber was cut after June, 1835, till the following winter, and there was then cut by me nearly eight hundred thousand feet merchantable timber, board measure; and I know of no

other timber being cut thereon, till the exploration made by me as aforesaid. I estimated the timber in the spring of 1836 to be about 3,000,000, suitable to be sawed into boards, board measure; and I think it now contains about the quantity last named; which, I think, is worth cutting and conveying to market. Before I caused any to be cut in the winter of 1836—I think the timber as above estimated worth one dollar a thousand; what is now standing is worth about the same, perhaps a very little less than one dollar a thousand.

6th. There is some spruce and considerable cedar, but I do not consider that in June, or at this time, there was, or is, any value in that timber.

7th. The chance to get the timber to market from this tract is rather hard; the distance to haul is, on an average, two miles and a half; it is bad swamping; the stream through which the timber must be floated is bad to drive in; the timber is scattering, and does not stand so thick as to make any good berth for a team. According to the appearance of the stumps when I first examined it, in the fall of 1835, I think, it had been much operated upon and the best of the timber taken off, and I think this must have been done in 1834 and 1835.

8th. I do not think the tract valuable as settling land at this time, and I do not think it would be of any value to an owner living in Massachusetts for that purpose; the time may come when the land will be valuable for settling land, but I think the intermediate taxes would more than offset its probable future value.

9th. I think in 1835 the tract might have been worth four thousand dollars, and at this time it is worth not much over three thousand dollars, and the value consisted, in June, 1835, and at this time, in the timber thereon.

10th. I have no doubt the tract is embraced within the limits of the Bingham purchase, but by whom, to whom, or for what price it was sold, I have no personal knowledge.

11th. I know nothing of such exploration or any other fact connected therewith, as referred to in this interrogatory.

12th. I am some acquainted with lands on the south and on the west of the Ford tract, but not on the north or east; the lands on the south and west contained some pine timber in June, 1835, in quantity and quality about as the timber on the Ford tract.

13th. I am acquainted with Luther Moore and Thomas Chase, and have been for about three years; I was acquainted with Jonas Brown in Standish, before I came to the county of Somerset; I should put no reliance whatever upon any certificate of Moore or Chase; the general reputation of Brown is good, but I know nothing of his judgment in reference to timber or timber land; John Hill I never knew.

14th. I know nothing of the subject referred to in this interrogatory.

15th. I have no knowledge of the matter.

16th. I know nothing of the facts referred to in this interrogatory.
17th. I have stated all I know on the subject.

WADSWORTH BOULTER.

SOMERSET, *March* 31, 1838.

The aforesaid deponent was examined, and cautioned, and sworn agreeably to law to the deposition and answers foregoing, subscribed by him, and taken at the request of Otis Daniell, and to be used in the cause mentioned in the annexed commission.

Before me, JOHN S. TENNEY,
Justice of the Peace.

"E."

Testimony of A. Z. Littlefield.

Deposition of Aaron Z. Littlefield, Esquire, of Skowhegan, in the county of Somerset, a witness produced, and sworn, and examined in a suit pending in the Circuit Court of the United States, wherein Otis Daniell is plaintiff in equity against William C. Mitchell and als., defendants; the deposition taken before me, John S. Tenney, one of the justices of the peace in and for the county of Somerset, in virtue of the annexed commission.

To the interrogatories propounded by the plaintiff the witness answers as follows, to wit:

1st. I am not aware that I know either of the parties.

2d. I reside at Skowhegan in the county of Somerset. I have been, and am now, engaged in the business of a trader, and have been, and now am, interested in the lumbering business, and have dealt some in the purchase and sale of wild and timber lands, and have had considerable experience in exploring timber and other lands. I have been engaged more or less in lumbering, as a hand, an owner, and an agent, for more than twenty years, and I think I can judge of the quality and value of such lands.

3d. I have been upon the lot of land called the Ford tract, on Austin stream, now in the town of Mayfield, a great many times. In 1834–'5 I put thereon three teams, having before, in the same season, been on to the tract with Charles M. Davis, of Portland, who engaged me to put on said teams. The same season I laid out certain lots, on which the teams were to operate; since which time I have been on the tract at two different times, and have, I think, examined it thoroughly. I was not engaged to explore it, excepting the first time, when I went on for Mr. Davis, as I have described. In the spring of 1835 I run the line between this tract and the Bald Mountain township. When I run out the lots for the teams Samuel Hayden was with me. Charles M. Davis, Joseph Moore, and Luther Moore, have been with me when I have examined the lot, but I have generally been alone on the lot.

4th. When I went on with Mr. Davis, as aforesaid, William Wescott was not present, but I understood, was at the time an owner, from Wescott himself. I went on by the sole request, at that time, of said Charles M. Davis. I have known Haskins, but was not employed by him. I have never known the others named in the question.

5th. I am acquainted with the Ford tract. I first knew the same in the fall of 1833; the means of knowing the value thereof and the timber thereon are described in the answer to the third interrogatory. In June, 1835, I think all the timber suitable to be sawed into merchantable boards would fall short of two million feet board measure on said tract; besides this, there was quite a quantity of timber which I think of no value. Since that time some timber has been cut and hauled from the tract, but how much I cannot of my own knowledge say; and I have not been on the tract so as to form an opinion of the quantity of timber now remaining which is worth cutting and conveying to market. The value of the timber when I last knew the land was not great, on account of its being scattered over the whole tract, the difficulty of collecting it, and there being no good opportunity of floating it to market through a convenient stream.

6th. I think there was very little or no cedar or spruce timber of value on said tract in June, 1835.

7th. I have described the facilities of getting the timber on said tract to market, and the manner in which the timber stands, in my answer to the fifth interrogatory. The tract has been lumbered upon, there having been about five million of timber, board measure, taken off previous to June, 1835.

8th. There is very little good settling land upon the tract; it is generally a black swamp. There may be some good settling lots. If I owned the whole tract I should be glad to disclaim, in order to exonerate myself from the taxes which may be assessed.

9th. The answer is contained in the answer to the eighth interrogatory.

10th. I suppose that the tract was formerly owned by the Bingham heirs. I have always understood that John Black, the agent, conveyed to Eleazar Coburn & Sons. I do not know the price given, except from hearsay. It was sold, I think, in 1833, but am not certain.

11th. I know nothing on the subject of this interrogatory, excepting from hearsay.

12th. I am well acquainted with the tracts on the north and the west of the Ford tract. The lot on the north contains much superior timber, and the same is compact; and the line between that and the Ford tract is the boundary of the good timber. On the west there was good timber previous to June, 1835, but had been removed at that time. There is some tolerable timber on the lot south of the Ford tract. On the east there is none of value. The

timber on the north is much superior to what was ever on the Ford tract; and on the west, when it was there, was also superior to that on the Ford tract.

13th. I am acquainted with Luther Moore, Jonas Brown, and Thomas Chase. I do not know John Hill. I should put no reliance upon any certificate or oath of Luther Moore. I should not rely at all upon the certificate of Thomas Chase. I should not put so much reliance upon the certificate of Jonas Brown as upon those of men equally well acquainted with timber land.

14th. I know nothing concerning such a purchase.

15th. I do not know any thing in answer to the question.

16th. I did not.

17th. I have stated all that I know touching the question in dispute, excepting that there was not timber sufficient to supply my three teams, put on as aforesaid by me in 1834–'5, without removing a distance of about four miles, and they were obliged to come out sooner than they would otherwise have done; it was difficult to find the timber for the teams while there.

AARON Z. LITTLEFIELD.

SOMERSET, *ss:*

February 26th, 1838.

The aforesaid deponent was examined, and cautioned, and sworn, agreeaby to law, to the deposition and answers foregoing subscribed by him, and taken at the request of Otis Daniell, and to be used in the cause mentioned in the annexed commission.

JOHN S. TENNEY, *Justice of the Peace.*

"F."

Testimony of A. Coburn.

Deposition of Abner Coburn, of Bloomfield, in the county of Somerset, a witness produced and sworn and examined in a suit pending in the Circuit Court of the United States, wherein Otis Daniell is plaintiff in equity, against William C. Mitchell & als., defendants; the deposition taken before me, John S. Tenney, one of the justices of the peace in and for the county of Somerset, in virtue of the annexed commission.

1st. To the *first* interrogatory the deponent *as* as follows: I believe I have a very little acquaintance with William C. Mitchell, but no acquaintance with Otis Daniell.

2d. To the *second*, as follows: I reside in Bloomfield, in the county of Somerset. My occupation is, and has been, farming and surveying. I have been acquainted with timber and new lands, and have been much engaged in surveying and exploring the same for the last twelve years—also been considerably interested as an owner of such lands.

3d. To the *third*, as follows: I never surveyed the Ford tract so called. I was on the same at one time when Joseph Spaulding, Esquire, made a survey of it, and assisted in showing the lines. I have particularly explored it several times; but in no instance, I think, only when I was owner, or immediately before I became interested in the same. I went on to it before purchasing to satisfy myself whether it was an object to purchase or not, and since purchasing, to form a better opinion of the value; but I never explored it very thoroughly by running it into strips, but by going through it in different directions to form a general knowledge of its value.

4th. To the *fourth*, as follows: I did not.

5th. To the *fifth*, as follows: I am some acquainted with the Ford tract. I became interested as owner about eight years ago. I knew but little of said tract till about the time of our purchase, and I have known nothing of the same since we sold, which I think was in the year 1833. The means which I have had for ascertaining its value, are described in my answer to the third interrogatory. I do not know what quantity of timber was on it in 1835, nor what amount is on it at this time; neither do I know the quantity worth cutting and conveying to market, nor the value of such timber.

6th. To the *sixth*, as follows: I do not know.

7th. To the *seventh*, as follows: The timber I think could be run to market down Austin stream without much difficulty. I think it might be hauled to the waters of that stream, where it could be run without making the average distance to haul over one mile, and perhaps less. I am not sufficiently acquainted with the timber on said tract to know how it does stand at the present time, not having known much or any thing of the tract for the last five years, and having been informed that there had been considerable operations on it since that time—there was but very little operation on it prior to our sale in 1833, and that little was some small trespasses of but little consequence.

8th. To the *eighth*, as follows: Said tract is pretty good for settling land, and I think would be of some little value to an owner living in Massachusetts for that purpose.

9th. To the *ninth*, as follows: Not having known any thing of the tract since 1833, I am not able to state what was the value in June, 1835, or what the value now is. The value, I suppose, consists in the timber and settling land, the principal part of which I have no doubt, is in the timber now on the same.

10th. To the *tenth*, as follows: Said tract was formerly owned by Bingham's heirs and John Black, agent of the devisees of said Bingham, sold it to Eleazer Coburn, Philander Coburn, and myself, about the year 1830, for about three thousand dollars.

11th. To the *eleventh*, as follows: I do not.

12th. To the *twelfth*, as follows: I am acquainted with the land adjoining the Ford tract—the land adjoining on the north and on the west, contained pine timber in 1835, and *do* now. On the north

was a berth of pine close to, on the line, of which the *the* Ford tract took the most of, and on the west was more or less pine near the line. I should think either of which tracts the pine was more compact, but probably of no better quality than the Ford tract.

13th. To the *thirteenth*, as follows: I am acquainted with Luther Moore, Jonas Brown and Thomas Chase, but not with John Hill. I should not put very much reliance upon the certificate of Luther Moore or Thomas Chase, as to the timber on a tract; but I should put considerable reliance on the certificate of Jonas Brown. I believe that Brown would certify as he honestly believed was correct, still I should not put the fullest confidence in the soundness of his judgment; that is, not so much as I should in some other men, as I am satisfied he forms a higher idea of the amount of timber than I do. Moore, I believe, fails in judgment, and is very irregular in his feelings, and probably about as irregular in his estimates; and I think generally estimates too high. Chase I am not so well acquainted with as the others, but think his judgment better than Moore's, still not entitled to very much regard.

14th. To the *fourteenth*, as follows: I have not.

15th. To the *fifteenth*, as follows: I do not.

16th. To the *sixteenth*, as follows: I recollect of hearing the sale spoken of about the time it was made, but I do not recollect hearing the defendants say any thing about it; altho' it may be I did, and if I did, I know not what.

17th. To the *seventeenth*, as follows: I do not.

ABNER COBURN.

SOMERSET, *ss*.

March 6th, 1838.

The aforesaid deponent was examined, and cautioned, and sworn, agreeably to law, to the deposition and answers foregoing, subscribed by him, and taken at the request of Otis Daniell, and to be used in the cause mentioned in the annexed commission.

Before me, JOHN S. TENNEY,
Justice of the Peace.

Plaintiff's Commission.

UNITED STATES OF AMERICA,
Maine district, ss: First circuit.

[L. S.] The Circuit Court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in the year of our Lord one thousand eight hundred and thirty-eight—To John L. Megquier, of Portland, and Nathaniel S. Littlefield, of Bridgton, said district, Esquires, or to either of them, respectively.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize

and empower, you to take the answers to the interrogatories hereunto annexed, of Anderis Killgore, of Waterford, and Oliver Hale, jr., of Portland, witnesses to be produced and examined in behalf of the plaintiff, to be used in a certain cause now pending in said court, wherein Otis Daniell, of Boston, is plaintiff in equity against William C. Mitchell and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Wiscasset, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this nineteenth day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

J. MUSSEY, *Clerk.*

The execution of this commission appears in the ten pages hereunto annexed, each of which bears the signature of the subscriber on the margin thereof.

NATHANIEL S. LITTLEFIELD,
Commissioner.

Testimony of A. Killgore.

Anderis Killgore, of Waterford, being produced, sworn, and examined, in behalf of plaintiffs named in the annexed commission, doth depose and answer as follows, to wit:

To the *first* interrogatory the deponent answers: That he does not know the complainant in this case; and at the time he explored the tract of land called the "Ford tract," hereinafter mentioned, a person was present by the name of Mitchell; if that person was William C. Mitchell, named in the title, then the deponent is acquainted with him—otherwise not. No other person being named in the title, the deponent cannot say whether or not he is acquainted with the other defendants.

To the *second* interrogatory the deponent answers: That he resides in the town of Waterford, county of Oxford, and State of Maine. That he has always carried on a farm, but for the most of the time, for the last twenty years, he has been engaged in the business of lumbering in the winter seasons; he has been engaged in hauling, surveying, and driving timber, and has done some sawing. That for the last six years he has been much engaged in

exploring timber lands; he has explored land on the St. John, Penobscot, Kennebec, Androscoggin, and Connecticut rivers.

To the *third* interrogatory the deponent answers: That he spent six days on the tract of land called the "Ford tract," in the month of June, 1836. The following persons went on to said tract of land with the deponent, to wit: Mr. True, Mr. Wescott, Mr. Mitchell, Mr. Libbey, Mr. Codman, Mr. Thompson, Mr. Molineux, Mr. Chamberlain, Mr. Spaulding, and two men by the name of Moore; he does not know the Christian name of any of the gentlemen. That he went on to said land in pursuance of a request contained in a letter from *of* Thomas Haskins, of Boston, for the purpose of ascertaining the quantity of pine timber on said tract of land. Mr. Codman, Mr. Wescott, Mr. Thompson, Mr. Molineux, and Mr. Spaulding, left the land before the expiration of the six days; the others remained on the tract of land during the six days. We were busily engaged during the time (except one rainy day) in examining and exploring said tract of land. We travelled through all parts of said tract of land as shown to us, and, as is usual in such business, frequently ascended trees for the purpose of discovering timber. At the end of the time I considered that we had thoroughly explored said tract of land.

To the *fourth* interrogatory the deponent answers: That he never explored said tract of land at any other time than that mentioned in the answer to the third interrogatory, and that he never was on said tract of land in company with Thomas W. Haskins.

To the *fifth* interrogatory the deponent answers: That he has no other knowledge of said tract of land, than that acquired by the exploration mentioned in the answer to the third interrogatory, and he has had no other means of knowing its value, or the value of the timber thereon. He does not know what quantity of timber suitable to be sawed into boards said tract contained in June, 1835, nor what quantity is now thereon. He cannot tell what portion of the timber now thereon is worth carrying to market, nor its value.

To the *sixth* interrogatory the deponent answers: That he was not requested by any of the parties to notice the spruce or cedar timber, and he can give no definite estimate concerning it.

To the *seventh* interrogatory the deponent answers: That the stream through which all the timber must be floated is small, especially at the upper part of the tract. He saw timber in the stream which appeared to have been cut two or three years. The timber is generally scattering. He saw two places which he judged would be decent chance for two teams for one winter's logging each. The tract has been much logged from, and the good timber picked out apparently. The appearances of the stumps indicated that timber had been cut on the tract for five or six winters, or more, before the deponent was there.

To the *eighth* interrogatory the deponent answers: That, in his opinion, the tract of land is not of much value as a settling tract, though some good land is found upon it.

To the *ninth* interrogatory the deponent answers: That he gave a certificate of his estimate of the quantity of timber on said tract of land at the time of his exploration, and that he cannot state the value of the said tract of land. His estimate was *three and an half millions* of pine timber.

The *tenth* interrogatory the deponent cannot answer, for want of knowledge of the facts.

To the *eleventh* interrogatory the deponent answers: That he knows nothing of any exploration of said tract of land made by Thomas W. Haskins in June, 1835.

To the *twelfth* interrogatory the deponent answers: That he found, on a tract of land adjoining the "Ford tract," a quantity of timber near and adjoining the line, of a superior quality to any on said "Ford tract." The timber on the "Ford tract" appeared to have been cut off up to the line.

To the *thirteenth* interrogatory the deponent answers: That he is some acquainted with Luther Moore, Jonas Brown, and Thomas Chase. He cannot say how much reliance is to be placed upon their estimates or certificates respecting timber or timber lands.

The *fourteenth* interrogatory the deponent answers in the negative.

The *fifteenth* interrogatory the deponent answers in the negative.

The *sixteenth* interrogatory the deponent answers in the negative.

To the *seventeenth* interrogatory the deponent answers: That he has stated in the foregoing answers all he knows relating to this cause, which, in his opinion, would benefit or injure either party. And further the deponent saith not.

ANDERIS KILLGORE.

MAINE DISTRICT, *ss: Town of Waterford.*

On the thirtieth day of July, A. D. 1838, the said Anderis Killgore, having been sworn, was examined, and made the foregoing answers, which were reduced to writing by the subscriber, and then being read to the said Killgore, were subscribed and sworn to by him.

Before me, NATHANIEL S. LITTLEFIELD,
Commissioner.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed—this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Testimony of O. Hale, jr.

Oliver Hale, jr., of Waterford, being produced, sworn, and examined, in behalf of the plaintiffs named in the annexed commission, doth depose and answer, as follows, to wit:

To the *first* question the deponent answers: That he is acquainted with Otis Daniell, and has been for the last four years. He is also acquainted with William C. Mitchell, and has been for six years past. The names of the other defendants not being specified in the title, the deponent cannot say whether or not he is acquainted with them.

To the *second* question the deponent answers: That he now resides in the county of Oxford, town of Waterford, in the State of Maine; he is a farmer, and has generally followed the business of farming; has been in trade some, and has followed the lumbering business to a considerable extent for the last fifteen or twenty years; and for the last five or six years has been engaged in buying, selling, and operating on eastern lands; and has explored many tracts of said lands; and is well acquainted with such lands, and the value of the same, and the timber thereon.

To the *third* question the deponent answers: That he never explored the tract of land called the "Ford tract." In the latter part of the winter of 1835, he, in company with Nathan Winslow, Robert Keith, and Joseph Dudley, crossed said tract of land in going on to a tract called the "Bald Mountain" tract. They went across the westerly part of said Ford tract, and viewed the same from Bald mountain, which lies near. The view from Bald mountain is convenient for the examination of said Ford tract. From what the deponent saw in crossing said land, and the view of the same, as aforesaid, he does not consider the same to be a timber tract. The timber is very scattering, and he saw no good clumps of timber on the tract.

To the *fourth* question the deponent answers in the negative.

To the *fifth* question: The deponent refers to his answer to the *third* question. He cannot state what quantity of timber said tract contained in June, 1835, or what quantity it now contains; he does not consider the land valuable as a timber tract.

To the *sixth* question the deponent answers: That he does not recollect of seeing a single spruce or cedar tree on said land.

To the *seventh* question the deponent answers: That the stream through which said timber must be floated is small and rocky; he does not consider the facilities for getting out the timber good. He saw no place where would be a good berth for a team; it is scattering. The thickest of the timber has been taken off—some of it in 1834.

To the *eighth* and *ninth* questions the deponent answers: That he should consider said land worth about one dollar per acre; but to a man living in Massachusetts it would be a bad bargain at that price.

The *tenth* question the deponent cannot answer, not being acquainted with the facts.

To the *eleventh* question the deponent answers: That he did know, in 1835, that Thomas Haskins, William Wescott, and others, had

explored said tract of land, by hearing it so stated by some of them at the time; but as to what means were used to induce them, or any of them, to suppose there was a great quantity of timber thereon, he cannot answer.

To the *twelfth* question the deponent answers: That he is acquainted with the "Bald Mountain" tract, which lies to the northwest of the Ford tract, and a tract called "the six thousand acre piece," which lies on the south or southwest line of the Ford tract, both of which are much better timbered than said Ford tract. There is on said "Bald Mountain" tract a very handsome piece of timber near one mile in length, and laying on the line of the Ford tract. On the Ford tract the timber is cut off up to the line. "The six thonsand acre piece," before mentioned, is well timbered, and the timber comes up to the line of the Ford tract.

To the *thirteenth* interrogatory the deponent answers: That he is acquainted with Luther Moore, Jonas Brown, and John Hill. He considers their judgment, as to the quantity and value of timber, good, but would place no reliance upon their certificates, unless he knew how they were obtained.

To the *fourteenth* interrogatory the deponent answers: That Thomas W. Haskins told him, in 1835, that the plaintiff, and others, had purchased said tract of land; but of the means used to induce the plaintiffs to purchase said land he knows nothing.

To the *fifteenth* interrogatory the deponent answers: That, among others, the following persons were interested in the sale of said land in June, 1835, to wit: Oliver B. Dorrance, Thomas Todd, D. & W. Wescott, Mason Greenwood, Thomas Warren, William H. Codman; but as to their several interests, how acquired, and how held, and whether they claimed or received any of the money or notes for said land, he cannot say.

To the *sixteenth* interrogatory the deponent answers: That he had some conversation with several persons who he considers were owners of said land before it was sold to the Boston company in the summer of 1835, and among others William Wescott. The deponent expressed to said Wescott his opinion that said land was a poor tract, and said Wescott once or twice requested and urged the deponent to say nothing which would injure the sale of said land. The particular conversation with the others the deponent does not recollect.

To the *seventeenth* interrogatory the deponent answers: That he knows nothing relating to this cause, other than he has testified to in the foregoing answers; and further the deponent saith not.

OLIVER HALE, Jr.

Maine District, *ss: Town of Waterford.*

On the first day of August, A. D. 1838, the said Oliver Hale, jr., having been sworn, was examined, and made the foregoing answers, which were reduced to writing by the subscriber, and then being

read to the said Hale, were subscribed and sworn to by him, before me, NATHANIEL S. LITTLEFIELD,
Commissioner.

Defendant's Commission.

UNITED STATES OF AMERICA,
Maine District, ss: First Circuit.

The Circuit Court of the United States, begun and holden at Portland, within and for the Maine district, on the first day [L. S.] of May, in the year of our Lord one thousand eight hundred and thirty-eight—To John L. Megquier and Joseph Adams, both of Portland, in said Maine district, Esquires, or to either of them, respectively:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Joseph Hoole, William Cutter, Oliver B. Dorrance, and John How, witnesses to be produced and examined in behalf of the defendants, to be used in a certain cause now pending in said court, wherein Otis Daniell, of Boston, is plaintiff in equity, against William C. Mitchell and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully, on oath, touching the premises. And when you shall have taken the examination as aforesaid to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses, in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed, to the circuit court aforesaid, next to be holden at Wiscasset, on the first day of October next.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this thirteenth day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

J. MUSSEY, *Clerk.*

The execution of this commission appears in the ten pages annexed, which bear the signature of the subscriber in the margin of each. The answers of the within named William Cutter have not been taken, because the said Cutter has not been within Maine district, to the knowledge of the subscriber, since he received this commission.

JOHN L. MEGQUIER, *Commissioner.*

Defendant's Interrogatories.

CIRCUIT COURT OF THE UNITED STATES, *Maine District:*

In the matter or bill there pending of Otis Daniell, complainant, vs. William C. Mitchell & als.

Interrogatories to be propounded to Joseph Hoole, William Cutter, and Oliver B. Dorrance:

Interrogatory first. Please state where you reside, what is your age, whether you are acquainted with timber and timber lands; whether you have dealt in the buying and selling of timber lands; whether you are acquainted with a tract of land lying in Somerset county called the Ford tract; whether you were ever on the same, and have any personal knowledge of the tract. Please state, if you know, what was the general character of said Ford tract, in 1835, as a timber tract; had it, or had it not, in the summer of 1835, and before that time, the reputation of being a well timbered and well situated tract?

Interrogatory second. Are you or not acquainted with the manner in which explores proceed in order to determine the quantity of timber on any tract? Have you or not employed persons to explore tracts for you? Have [you] or not ever been engaged personally in exploring, or in accompanying explorers, in making their explorations? If yea, what course did such explorers adopt to ascertain the quantity of timber? Did they scale, measure, and take an account of each tree suitable for timber standing on the tract, and visit every part of the tract, taking an account of every tree, or what course did they pursue? State whether or not the universal practice be, or be not, to merely make a general estimate according to the explorers' best skill and judgment, after having visited what are supposed to be the principal glades and berths, and seeing the general character of the tract. How long would it take an explorer, according to your best judgment, to visit each tree on the Ford tract, to scale, measure, and take an account of the same, and in that way ascertain the quantity of timber standing on said tract?

Interrogatory third. Are you acquainted with Jonas Brown, Thomas Chase, John Hill, or were you acquainted with the late William Wescott? If yea, state whether the said Wescott was a man of truth and veracity, whose statements might be depended on; and whether the said Brown, Chase, and Hill, are known, or reputed to be, men well acquainted with timber and timber lands; whether they are accounted to be skilful and practical explorers, and men to be depended on.

WILLIAM P. PREBLE,
Solicitor for defendants.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
June 18, 1838.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

June 21, 1838. Served an attested copy of the foregoing by transmitting same, by mail, to Peleg Sprague, Esquire, solicitor for plaintiff, with notice to file cross interrogatories on or before the seventh day of July next, the day on which a commission would issue herein according to the rules.

Attest: J. MUSSEY, *Clerk.*

A true copy from the original on file.

Attest: J. MUSSEY, *Clerk.*

Objections.

Plaintiff's Objections

To the interrogatories to Joseph Hoole, William Cutter, and Oliver B. Dorrance.

To the 1st, plaintiff objects to all inquiries respecting the reputation of said tract, as hearsay.

Plaintiff objects to the 2d interrogatory as leading —, and to any statement of the mode of exploring, except within his own personal knowledge, as hearsay.

To the 3d, the plaintiff objects, as it seeks mere matter of reputation and hearsay.

SPRAGUE & GRAY,
Solicitors of Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Recived and filed.

Attest: J. MUSSEY, *Clerk.*

(Memo.) Defendants have leave to amend 2d interrogatory by inserting the words "or not" in the first and fourth lines.

A. WARE.

Plaintiff's Cross Interrogatories.

Cross interrogatories to Joseph Hoole, William Cutter, and Oliver B. Dorrance.

1st. If in answer to the first direct interrogatory, you state that you are acquainted with timber lands, state to what business you were educated; what tracts you have explored; when, and how long, you were upon each of them? How long you were upon the Ford tract, when, and with whom, and what portion of it you saw?

2d. Have you ever owned, or had any interest in, any part of said Ford tract? If yea, how much, when, how did you acquire such interest, of whom, by what contract or agreement, for what consideration; what did you agree to pay therefor, in what property, on what credit; how much did you pay therefor; have you ever agreed to sell the same, if yea, to whom, upon what terms, what have you received therefor; have you ever had any of the money or notes which the plaintiff paid or gave for a part of said tract, or any note against the plaintiff, if yea, describe the same; of whom did you receive it, and for what consideration, and under what agreement; have you ever stated that you did not such note for any claimed interest in said tract, or that you paid the money therefor; and have you ever stated that you purchased a portion of said tract at two dollars the acre?

SPRAGUE & GRAY,
Solicitors for Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

A true copy.

Attest: J. MUSSEY, *Clerk.*

Defendant's Interrogatories.

CIRCUIT COURT OF UNITED STATES, *Maine District.*

In the matter or bill there pending of Otis Daniell, complainant, vs. William C. Mitchell & als.

Interrogatories to be propounded to John How.

Interrogatory first. Please state where you reside, and your age. Were you the owner of, or interested in, an undivided share or portion of a tract of land in the county of Somerset, called the Ford tract, in the spring and summer of 1835? What was the reputation of said tract as a timber tract in the spring of 1835? If you were interested in said tract, say what you considered the fair market value at that time, of the tract, per acre. What was the lowest rate at which you would have sold your share or interest, per acre, in June, A. D. 1835?

Interrogatory second. Did you or did you not endeavor to get a bond or obligation for the sale of their interest, in said tract, from William C. Mitchell, Tristram G. Mitchell, David Wescott, and others, in the spring of 1835? What was the reason why you did not obtain the bond as you wished; and were you, or were you not, desirous of obtaining, and did you not try to obtain, such bond, in the belief that said tract would readily sell in the market at that time at a profit on what you proposed to give? Please state whether

or not you were then informed by some of the owners that they were already under engagement to James Todd and William H. Codman ?

Interrogatory third. Are you acquainted with John Hill, of Conway ? Is he, or is he not, a man well acquainted with timber and timber lands; and is he, or is he not, a man whose judgment and statements, in regard to the character of timber lands, may be relied on ? Were you acquainted with William Wescott, in his lifetime ? If yea, say whether or not he was a man of fair reputation and standing; and whether he had, or had not, the reputation of a man whose statements were entitled to credit, and might be depended on.

WM. P. PREBLE,
Solicitor for defendants.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
June 18*th*, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

June 21, 1838. Served an attested copy of the foregoing by transmitting same by mail to Peleg Sprague, Esquire, solicitor of the plaintiff, with notice to file cross interrogatories on or before the seventh day of July next, the day when a commission would issue herein according to the rules.
Attest: J. MUSSEY, *Clerk,*

A true copy from the original on file.
Attest: J. MUSSEY, *Clerk.*

Objections.

Plaintiffs Objections.

CIRCUIT COURT OF THE UNITED STATES, *for Maine District.*

In the matter or bill of complaint there pending between Otis Daniell, complainant, vs. William C. Mitchell, and als.

To the interrogatories to be proposed to John How, the plaintiff objects.

To the 1st. He objects to the enquiry as to the reputation of the Ford tract, or hearsay.

To the 2d. Plaintiff objects to any conversation between witness and the defendants, or either of them, or any body else ; as hearsay and incompetent, and for the same reason, he objects to all declarations of the defendants. Plaintiff objects to all statements of opinions of the witness, or of his belief or expectations, there being no foundation laid for giving opinions or expectations by any personal knowledge of the witness of the tract, nor his skill in the subject.

To the 3d interrogatory. Plaintiff objects as asking matters of reputation and opinion.

SPRAGUE and GRAY,
Solicitors of Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

Plaintiff's Cross Interrogatories.

CIRCUIT COURT OF THE UNITED STATES, *for Maine District.*

In the matter or bill of complaint there pending between Otis Daniell, complainant, vs. William C. Mitchell and als.

Cross Interrogatories to be propounded to John How.

1st. What interest had you in June, 1835, or at any other time, in the Ford tract; and how, and from whom, did you purchase it? What did you give therefor; and how did you pay? Was it in cash, or how otherwise? Was it on credit in whole or in part? And how, and when, and to whom did you pay for the same? Have you ever sold, or agreed to sell, the same? When, to whom, for what consideration? Have you got your pay, how and when? Have you ever received, or claimed, or have any claim to receive, any part of the consideration paid by the plaintiff for said tract?

2nd. If you state that you wished to obtain a bond, state whether you wished yourself to become the purchaser, or only to get the bond in the hope of selling to others.

3d. If you state you know John Hill, of Conway, state when and where you first became acquainted with him. How often have you seen him? Have you ever explored any timber tracts with him? If yea, when and what tracts.

SPRAGUE and GRAY,
Solicitors for Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

A true copy.
Attest: J. MUSSEY, *Clerk.*

Testimony of John How.

John How, of Portland, being produced, sworn, and examined on behalf of the defendants named in the commission hereunto annexed, doth depose as follows, to wit:

To the first direct interrogatory, the deponent says, that he resides in Portland, in the county of Cumberland, and State of Maine. That he is forty-four years of age. That he was owner of one thousand acres of land in the Ford tract so called, in the year 1835 —in the spring of that year. That the reputation of said tract was good as a timber tract, and that he thought it was worth about four dollars fifty cents per acre in June, 1835, or about that time.

To the second direct interrogatory, the deponent says, that some time in the spring of 1835, he had frequent conversations with some of the owners of the Ford tract on the subject of a bond of said tract, and afterwards with all, and thought he had obtained the consent of them all to give him a bond of their several interests in said tract, at four dollars per acre, and according wrote a bond at that price. That he shew it to Tristram G. Mitchell, who wrote the word "approved," and signed his name to it with a pencil—there being a number of owners. That deponent did not know certainly that he had put the right number of acres to each one in the bond, and requested said Mitchell merely to signify his approval of it in the way the deponent has mentioned, so that if there was no error in the bond, he would copy it for their signatures. The deponent then called on one of the Messrs. Wescotts, and he thinks it was David Wescott, who mentioned that he was under obligations to Mr. James Todd and Mr. William H. Codman, and he could not then give the deponent a bond of the tract, but he said, if they did not have a bond of it, he would give one to the deponent. The deponent was anxious to obtain the bond, as he thought he could sell it at an advanced price.

To the third direct interrogatory, the deponent says, that he is acquainted with Mr. John Hill, of Conway, and considered him a good judge of timber lands, and should have placed much confidence in his statements; and the deponent was also acquainted with the late William Wescott, deceased; and the deponent says, that he considered the said William Wescott's statements entitled to credit, and that he was a man of fair reputation and standing.

To the first cross interrogatory, the deponent says, that he sold his interest, being one thousand acres in said tract, on the 21st day of May, A. D. 1835. That he purchased with Messrs. Erastus Hayes and Israel Waterhouse of Samuel E. Crocher at three dollars fifty cents per acre, he thinks. That the terms were one quarter cash, which he paid, and the residue in three equal annual payments, with interest. That he did not take a deed of it, as he preferred it should remain in that situation until he sold it, that the deed might go from Mr. Crocher to the person to whom he should

sell. On the twenty-first day of May, 1835, the deponent sold it to Capt. William Merrill for some property in the city of Portland, without any definite sum being fixed per acre. Said Merrill offered the property in exchange for the said one thousand acres, which the deponent accepted. This deponent says, that he has not received, or claimed, nor has he any claim to receive, any part of the consideration paid by the plaintiffs for said tract.

To the second cross interrogatory, the deponent answers that he wished to obtain the bond in the hope of selling to others.

To the third cross interrogatory, the deponent answers, that he does not recollect when he first became acquainted with Mr. Hill; he thinks it was in the spring of 1835. That he has seen said Hill many times, and that this deponent has never explored land with him or any body else.

July 26. JOHN HOW.

MAINE DISTRICT, *ss : City of Portland.*

On the 26th day of July, A. D. 1838, the said John How having been sworn, was examined, and made the foregoing answers, which were reduced to writing by the subscriber, and then, being read to the said deponent, were subscribed and sworn to by him, before me,

JOHN L. MEGQUIRE, *Commissioner.*

MAINE DISTRICT, *ss :*

CIRCUIT COURT, CLERK'S OFFICE,

August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Testimony of Jos. Hoole.

Joseph Hoole, of Portland, being produced, sworn, and examined on behalf of the defendants named in the annexed commission, doth depose as follows, to wit:

To the first direct interrogatory, the said Hoole says, that he resides in the city of Portland; that he is fifty-two years of age; and that he is some acquainted with timber and timber lands. That he has bought and sold seven or eight tracts, or interests in them. Some he has purchased, and others he has not purchased, but sold under bonds. That he is partially acquainted with the tract of land in Somerset county called the Ford tract. That he has been once on a part of said tract. That he went upon the tract in the afternoon of one day, and left it in the afternoon of the next day. It might have been later than twelve o'olock, M., when he left it. And that, in the summer of 1835, and previous to that time, the Ford tract had the reputation of being well timbered and well situated, but not of being the best.

To the second direct interrogatory, the deponent answers and says, that he is some acquainted with the manner in which explorers proceed to ascertain the quantity of timber on any tract. That he has employed persons to explore lands, and has been in company with persons when making explorations. That it was not the practice of explorers to measure and scale every tree, and to take an account of all the trees on a tract, but it was the usual and general course for explorers to go into and view the principal glades of timber trees, and to make on the spot an estimate according to their best skill and judgment of the quantity of timber in such glades; and to discover the glades or berths of timber, it was the usual practice of explorers to climb high trees; and in this way they ascertained the general character of a tract, and formed their estimate of the quantity of timber on the tract per acre, and that such was then generally the practice as far as the deponent knows. The deponent is not sufficiently acquainted with the tract called the Ford tract, to state how long it would take an explorer to visit each tree on it, and scale, measure, and take an account of the same; but, in his judgment, it would take a very long time.

To the third direct interrogatory the deponent answers and says, that he is not acquainted with Jonas Brown or Thomas Chase, and that he is some acquainted with John Hill, but that he does not know whether they were or were not accounted to be skilful and practical explorers. The deponent says, he means that he is not acquainted with a Mr. Thomas Chase, who is to his knowledge an explorer of timber lands, though he does know a man of that name. And the deponent was not much acquainted with Mr. William Wescott, deceased, but so far as he had an opportunity to know, he believes Mr. Wescott was a man of truth and veracity, whose statements might be depended upon.

To the first cross interrogatory the deponent answers, that he was educated a farmer, but for about twenty-seven or twenty-eight years last he has been engaged most of the time in trade; that he has been on No. one, third range, on the Kennebec river, and letter B, in Penobscot county, besides the Ford tract, with explorers, but he did not pretend to make explorations himself; that he was on No. one and letter B together, as much as four days, he thinks, but it might not have been more than three days. That he was on the Ford tract in the winter of 1833, on letter B in fall of 1834, and on No. one in the winter of 1835; that he was on the Ford tract, as stated in his answer to the first direct interrogatory, parts of two days, at the time before stated, and that Abner Coburn and John H. Dana were with him on said tract; that that was the first tract of timber land he went upon, and he is unable to state what portion of the tract he saw, but that he examined as much of it as he could in the time he was on it.

To the second cross interrogatory the deponent answers, that he once had an interest in said Ford tract by a bond from the Messrs.

Coburn, conditioned to convey said tract to the deponent, or his assigns, upon the payment of one dollar and ten cents per acre therefor, as he thinks, and according to his best recollection, one quarter of said price to be paid in cash, and the residue in three equal annual payments, with interest annually, and to be secured by mortgage of the land; and that in the winter or spring of 1833, he sold his interest in said bond to Samuel E. Crocker, William Cutter, and Franklin Tinkham at an advance, as he thinks, of ten cents on the acre, which he has received. And the deponent says, that he never had any of the money or notes which the plaintiff paid or gave for any part of said tract, nor any note against the plaintiff, and that he has made no such statement as is supposed in the remainder of this interrogatory.

July 30. JOSEPH HOOLE.

MAINE DISTRICT, *ss: City of Portland.*

On the thirtieth day of July, A. D. 1838, the said Joseph Hoole having been sworn, was examined, and made the foregoing answers, which were reduced to writing by the subscriber, and then, being read to the said Hoole, were subscribed and sworn to by him, before me,

JOHN. L. MEGQUIER,
Commissioner.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Testimony of O. B. Dorrance.

Oliver B. Dorrance of Portland, being produced, sworn, and examined, on behalf of the defendants named in the annexed commission, doth depose as follows, to wit:

To the first direct interrogatory the said deponent says, that he resides in the city of Portland; that he is thirty-four years of age; that he is not personally acquainted with timber and timber lands, but has bought and sold land, relying on the judgment and opinion of others; that he has some information respecting the Ford tract from those acquainted with it, but was never upon said tract himself; that said tract was owned in 1835 by Col. Foxcroft and others, and that it was generally understood that it was a good tract, and that the operations on it for several winters were large, and the tract being situated near the Kennebec river, was considered valuable both for the lumbering business and for settling lands.

To the second direct interrogatory the deponent answers, that he is not acquainted with the manner in which explorers determine the

quantity of timber on a tract; that he has in some instances employed persons to explore for him, but he has never been engaged personally in exploring or in acompanying explorers in making their explorations; and he cannot say what is the practice of explorers, or how long it would take an explorer to do what is supposed in the remainder of this interrogatory.

To the third direct interrogatory the deponent says, that he has been acquainted with Jonas Brown and John Hill, but he never knew said Chase; that he was also acquainted with the late William Wescott, and ever considered him a man of truth and veracity, and the deponent should have relied on his statements. The said Brown and Hill are known as men experienced in the lumber business; and said Brown was in the habit of spending his winters in cutting and hauling logs, and was engaged by practical men in overseeing and superintending the same; said Brown was considered a skilful and practical explorer; as to the said Hill he cannot say, but they were both men who might be relied on.

To the first cross interrogatory the deponent answers nothing.

To the second cross interrogatory the deponent answers, that in 1835, Mason Greenwood contracted to sell to the deponent about seven thousand acres of land in the Ford tract, for which he was to pay, and did pay, to said Greenwood $3,500 in cash, and his notes payable in one, two, and three years, for $10,500, with interest, annually; that within a few days after this deponent made this purchase, Tristram G. Mitchell called on him with Hiram H. Dow, and asked the deponent if he had bargained for Greenwood's interest in the Ford tract, and the deponent answered that he had; that said Mitchell then inquired for what price the deponent would sell the same; to which the deponent answered, that he would sell for two dollars and fifty cents per acre, one quarter to be paid in cash, and the balance in good satisfactory notes, payable in one, two, and three years, with interest, annually. The deponent gave them a few days to consider the terms aforesaid, and received a letter while in Boston signifying their acceptance or agreement to purchase on said terms; the deponent received the cash payment and a bond from each of the parties, to wit: William C. Mitchell and Co., and Hiram H. Dow, to secure the remainder of the purchase money by good and satisfactory notes within a specified time, and deponent thinks within sixty days; and at the expiration of that time, or subsequently, the said Mitchell and Co. passed to the deponent two notes against Otis Daniel, each for the sum of four thousand three hundred and seventy-five dollars, payable in two and three years respectively, with interest, annually, from June 29, 1835, and they endorsed and guarantied the said notes, which the deponent passed to said Greenwood, and took up his own notes to him. The deponent had another note against said Daniell, which he received from Dr. William B. Gooch who was owing the deponent; and his debt being much less than the amount of the note, the deponent paid

the balance at the time to those who were interested, but he has no means of ascertaining the amount paid, or the time when it was paid. The first note against Mr. Daniell was conditionally paid by him, and in a subsequent arrangement made by Mr. Greenwood with said Daniell on account of said Daniell's representations of his misfortunes in purchasing eastern lands, the deponent gave up or paid back $2,457 87, and he then supposed the whole concern was satisfactorily compromised between the parties. And the deponent has never stated otherwise than that he gave two dollars per acre for his interest in the Ford tract.

August 6th. O. B. DORRANCE.

MAINE DISTRICT, *ss: City of Portland.*

On the sixth day of August, A. D. 1838, the said Oliver B. Dorrance having been sworn, was examined, and made the foregoing answers, which were reduced to writing by the subscriber, and then being read to the said deponent, were subscribed and sworn to by him, before me, JOHN L. MEGQUIER,

Commissioner.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,

August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Defendant's Commission.

UNITED STATES OF AMERICA,

MAINE DISTRICT, *ss: First Circuit.*

[L. S.] The Circuit Court of the United States, begun and holden at Portland, within and for the Maine district, on the first day of May, in the year of our Lord one thousand eight hundred and thirty-eight:

To William Allen, of Norridgewock, in said district, esquire: Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed, of Joseph Spaulding, Jonas Brown, and Thomas Chase, witnesses to be produced and examined in behalf of the defendants, to be used in a certain cause now pending in said court, wherein Otis Daniell, of Boston, is plaintiff in equity, against William C. Mitchell, and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination, as aforesaid, to reduce, or cause the same to

be reduced, to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, next to be holden at Wiscasset on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this thirteenth day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

J. MUSSEY, *Clerk.*

STATE OF MAINE, *Somerset, ss:*

August 1*st*, 1838.

By virtue of the within commission I have summoned the within named witnesses, and they severally appeared before me this day, and deposed, on oath, as the law directs, in answer to the several interrogatories propounded to them, as more fully appears in their depositions hereto annexed, subscribed and sworn to before me.

WILLIAM ALLEN, JR.,
Justice of the Peace.

Defendant's Interrogatories.

CIRCUIT COURT OF THE UNITED STATES, *Maine District*, 1838.

In the matter or bill between Otis Daniell, complainant, against William C. Mitchell and als., interrogatories to be put to Joseph Spaulding, a witness produced in behalf of the complainant, and interrogated by him.

Interrogatory first. Have you, or have you not, visited, in company with Thomas Chase, the berth or glade of timber standing on the tract adjoining the Ford tract, which berth or glade was shown and alleged to be the one visited and accounted by Chase and Haskins, in June, 1835, as on the Ford tract? If yea, what quantity of timber, according to your best skill and judgment, is there in that glade? Whereabouts was said glade, compared with the Ford tract? Is it, or is it not often the case, that explorers get over a line without observing it?

Interrogatory second. What is the reputation of Jonas Brown as an explorer? Is he, or is he not, a man well acquainted with timber and timber lands, and a good judge of the quantity of timber standing on timber lands?

WM. P. PREBLE,
Solicitor for Defendants.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
June 19, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

June 23, 1838.

Served an attested copy of the foregoing, by transmitting same by mail, to Peleg Sprague, esquire, solicitor for plaintiff, with notice to file cross interrogatories on or before the seventh day of July next, the day on which a commission would issue herein according to the rules.

Attest: J. MUSSEY, *Clerk.*

A true copy, from the original on file.
Attest: J. MUSSEY, *Clerk.*

Plaintiff's Cross interrogatory.

Cross interrogatory to Joseph Spaulding. If, in answer to the 1st direct interrogatory, you state you have been on any glade or tract of land without the limits of said Ford tract, state when, and by whom, were shown the same, and how does the quantity of good pine timber thereon compare with the quantity of such timber on said Ford tract? Is it more or less, and what is the proportion?

SPRAGUE & GRAY,
Solicitors for Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

A true copy. Attest: J. MUSSEY, *Clerk.*

Defendants' Interrogatories.

CIRCUIT COURT OF THE UNITED STATES, *Maine District.*

In the matter or bill in equity there pending, wherein Otis Daniell is complainant, vs. Wm. C. Mitchell and als., interrogatories to be propounded, in behalf of the defendants, to Jonas Brown.

Interrogatory first. Please state where you reside, and what is your age, and whether or not you are acquainted with timber and timber lands? Whether or not you have been employed in exploring timber lands? and whether or not you have been employed in estimating the quantity of timber standing and growing on timber lands? Have you or not often been so employed, and are you well acquainted with the business? Whether or not you are acquainted with the lumbering business, and how long have you been acquainted with it?

Interrogatory second. Whether or not are you acquainted with a certain tract of land, in the county of Somerset, called the Ford tract? If yea, how long have you been acquainted with the same? Whether or not have you been on said tract, and over the same? And if yea, how many times? Whether or not you have ever lumbered on said tract? And if yea, when?

Interrogatory third. Please state whether or not you ever explored said Ford tract, with a view to ascertain its character as a timber tract. Whether or not you ever explored said tract in company with William Wescott? And if yea, when, and for what purpose, and at whose request.

Interrogatory fourth. Please state the usual course of proceeding adopted by explorers acquainted with the business of exploring, to ascertain the quantity of timber on any tract, according to your own knowledge and experience. Do they ever undertake to actually scale and measure the trees, and take an account of their number; and so ascertaining, by actual scaling, measuring, and counting the trees on the tract, the quantity of timber on the same; or do they make an estimate merely, according to their best skill and judgment, of the quantities in the various berths and glades? State how long, in your judgment, it would take a man well acquainted with the business to actually scale, and measure, and take an account of every timber tree standing on the Ford tract, when you explored the same.

Interrogatory fifth. If you state that you accompanied William Wescott in exploring the Ford tract, please state *when* it was, and whether you gave a certificate, stating the amount or quantity of timber on said tract, as estimated by you. What was the object of said Wescott in having said tract explored at that time? Were or were not he, and his brother David, at that time contemplating purchasing an interest in said Ford tract? Did the said William Wescott, or any other person for him, endeavor to persuade or induce you to estimate the quantity of timber high, or higher than its actual amount, in your judgment? Did or did not the said William Wescott caution you not to over estimate the quantity, and to be sure to keep within bounds, by putting the whole at as low an estimate as in your judgment the actual state of the tract, and quantity of timber thereon, would admit?

Interrogatory sixth. If you state that you gave in May, of the year 1833, a certificate to said William Wescott, in regard to the quantity of timber on said Ford tract, say whether you did at that time, knowingly and intentionally, over estimate the quantity of timber on said tract, or whether there were in fact, according to your best skill and judgment, at that time, and as then stated in your certificate, on said tract "fifty millions, to speak within bounds, of prime pine timber; that is to say, as good as any on the Kennebec waters?"

Interrogatory seventh. Did you or did you not act as agent for David and William Wescott in the winter of 1833-'4, in lumbering on the Ford tract? If yea, what quantity did you cut therefrom? Would or would not the fact, of your lumbering on the tract that season to no greater extent, injure the sale of said tract in the market; or would it have a tendency to bring the tract more into notice, and make it more sought for?

Interrogatory eighth. Are you acquainted with Thomas Chase? If yea, is he or not reputed to be a good explorer, well acquainted with timber and timber lands, and a man to be depended on?

WM. P. PREBLE,
Solicitor for defendants.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
June 18, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

June 21, 1838.

Served an attested copy of the foregoing, by transmitting same by mail, to Peleg Sprague, esquire, solicitor for plaintiff, with notice to file cross interrogatories on or before the seventh day of July next, the day on which a commission would issue herein according to the rules.

Attest: J. MUSSEY, *Clerk.*

A true copy, from the original on file.
Attest: J. MUSSEY, *Clerk.*

Plaintiff's Objections.

Objections to the interrogatories to Jonas Brown.

To the 3d, plaintiff objects to any statement or declaration of William Wescott.

To the 4th, as leading.

To the 5th, that it seeks to obtain the declaration and statement of William Wescott, or some other person, as to the object or purposes of said Wescott or his brother.

SPRAGUE & GRAY,
Solicitors of Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk*

Plaintiff's Cross Interrogatories.

Cross Interrogatories to Jonas Brown.

1st. If, in answer to the interrogatories, you state that you ever explored said Ford tract, state what quantity of pine timber, as good as any that was on the Kennebec waters, was then standing on said Ford tract. Did you explore said tract in the spring of 1833, and how much pine timber, as good as any then upon the Kennebec waters, was there upon said Ford tract? How much of said timber was upon said tract in the spring of 1835, and how much of said timber is now upon said tract? Do you know, or

will you now say, under oath, that you believe that there was on said Ford tract, in the spring of 1833, fifty millions feet of as good pine timber as was on the Kennebec waters, or one half, or one quarter part of that quantity, and what proportion of that quantity?

2d. If you state that you explored said tract in the spring of 1833, state at whose request, how much was agreed to be paid you therefor, and how much was paid you, and by whom. Did you make a certificate; if yea, at whose request, and to whom did you deliver the same?

3d. If you state that you lumbered on said tract in 1833–'4, state at whose request, as whose agent, on what part of said tract, with how many teams and how many men; how much timber you hauled therefrom, what was the quality of the timber so cut and hauled; how and how much was you paid for your services, and by whom? Have you been employed by the said William Wescott or his brother, David Wescott, at any other time, in lumbering upon said Ford tract or any other tract, and in exploring any other tract, and when, and how often?

SPRAGUE & GRAY,
Solicitors for Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

A true copy.
Attest: J. MUSSEY, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES, *Maine district.*

In the matter or bill there pending of Otis Daniell, complainant, *vs.* William C. Mitchell & als.

Defendant's Interrogatories.

Interrogatories to be propounded in behalf of the defendants, to Thomas Chase.

Interrogatory 1st. Please state where you reside, and what is your age? State, also, whether or not you are acquainted with timber and timber lands, and whether you have been employed in exploring and in estimating the quantity of timber standing and growing on timber lands, and whether or not you are well acquainted with that business.

Interrogatory 2d. What is the course usually adopted by explorers acquainted with the business of exploring, in order to ascertain the quantity of timber on a tract, according to your own knowledge and experience in the business? Do explorers undertake to scale, measure, and count each timber tree standing on the tract, and so, by actual scaling and taking an account of all the trees, ascertain the quantity of timber on the tract; or do they make an estimate

merely, according to their best skill and judgment, of the quantities in the various berths and glades visited by them? How long would it take an explorer to actually visit every part of the Ford tract, and take an account, by scaling and measuring each timber tree, of the quantity of timber on said Ford tract?

Interrogatory 3d. Were you or were you not employed by Thomas W. Haskins and Robert W. Molineux, or one of them, to explore the Ford tract, in the month of June, A. D. 1835? If yea, state who accompanied the party, and whether James Todd and William Wescott were present. How long were you making said exploration? Did you or did you not continue to prosecute the exploration until said Haskins and Molineux declined proceeding farther, and declared themselves satisfied? What quantity of timber, according to your best skill and judgment, did you find standing on said Ford tract? Was the estimate, made by you, fairly made? Do you or do you not now feel satisfied with the estimate you then made? Did the said James Todd or the said William offer or promise you any sum of money or compensation to induce you to estimate the quantity of timber high? Did they, or either of them, use any arts or resort to any means to mislead you or deceive you, and so lead you to over-estimate the quantity of timber on said tract? If they resorted to any such means, please state them particularly and circumstantially.

Interrogatory 4th. Did William Wescott and James Todd, or either of them, hold any private conversation with you, or otherwise endeavor, in any way, to induce you to act unfaithfully towards the said Haskins and Molineux in making said exploration? Were you, in fact, led through the same glade of timber different times, and so misled and deceived into the supposition that the glades were not the same, but different, and thereby led to estimate the same glades twice or more, instead of once only. Were you led off from said tract on to adjoining tracts, and shown timber for and as standing on the Ford tract which was not on said tract? If you did get off the tract, say how, and whether designedly or undesignedly, and whether you saw any quantity of timber, and took an account thereof, off the tract, which would materially affect the amount stated by you in your certificate, given to said Thomas W. Haskins, of timber standing on said Ford tract. Did you afterwards revisit the spot in company with Joseph Spaulding? Say how much you did see and take an account of, supposing it to be on said Ford tract.

Interrogatory 5th. Did you or did you not hear said Thomas W. Haskins notify said James Todd that the company of which said Haskins was the agent would take said Ford tract, and that any further exploration was unnecessary? And did the said Todd or the said Wescott, to your knowledge, make use of any arts or means to induce the said Haskins to desist from making any further exploration of said Ford tract; if yea, what means?

Interrogatory 6th. Are you acquainted with Jonas Brown? Is he or is he not reputed to be well acquainted with timber and timber lands; and is he or is he not accounted a good explorer, and well skilled in estimating the quantity of timber standing on a tract explored by him for that purpose? Say, if you know, what is his reputation, and whether he is reputed to be a man who may be depended on as an explorer.

WM. P. PREBLE,
Solicitor for defendants.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
June 18, 1838.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

June 21, 1838.

Served an attested copy of the foregoing by transmitting same by mail to Peleg Sprague, Esq., solicitor for plaintiff, with notice to file cross interrogatories on or before the seventh day of July next, the day on which a commission would issue herein according to the rules.

Attest: J. MUSSEY, *Clerk.*

A true copy from the original on file.

Attest: J. MUSSEY, *Clerk.*

Plaintiff's Objections.

Objections to the interrogatories to Thomas Chase.

Plaintiff objects to the 2d, as leading.

To the 6th the plaintiff objects, as it asks the reputation of Jonas Brown, and seeks to introduce mere hearsay evidence and the opinion of the witness.

SPRAGUE & GRAY,
Solicitors of Otis Daniell.

MAINE DISTRICT.

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

Plaintiff's Cross Interrogatories.

Cross Interrogatories to Thomas Chase.

1st. If you state that you went with said Haskins, Wescott, and Molineux to explore said Ford tract, state whether you know the boundaries thereof, or who of your company, beside the said Wescott, knew the boundaries thereof. Do you now know whether

you went off of said tract or not; and, if you did, what proportion did the timber which you estimated off of said tract bear to that which you now know that you saw upon said tract? Did said Wescott undertake to furnish the provisions for such exploration, and were the same so nearly exhausted before the exploration was completed by the said Haskins and Molineux, that all the company could not proceed in the exploration without a new supply to be brought from a great distance?

2d. Did you, soon after said exploration, pay any sum of money to Mr. L. G. Fletcher, postmaster at Bingham? If yea, how much, and of whom did you receive it? Did you state to him, or any one else, that you received the same for your services, for such exploration?

SPRAGUE and GRAY,
Solicitors for Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

A true copy.
Attest: J. MUSSEY, *Clerk.*

Testimony of J. Spaulding.

Joseph Spaulding, the witness named in the commission hereto prefixed, deposes on oath, and answers the interrogatories filed in the Circuit Court of the United States, Maine district, and propounded to him in the matter or bill between Otis Daniell, complainant, and William C. Mitchell and others, defendants, as follows, to wit:

To the *first* interrogatory, in chief, the said deponent answers: That the town of Mayfield, in the county of Somerset, is divided, and the division known as follows: 1st, The *Heald tract*, being a small tract of timber land in the northwest corner of said town; 2d, the *Ford tract*, comprising more than two-thirds of the town, being the northerly and westerly parts thereof; and 3d, the *Coburn reserve*, situate in the southeast part of said town; that he was employed by Colonel Black, the agent of the proprietors, about ten years ago to survey into lots, all the land in the south part of that township, that he, the said deponent, considered suitable for settling—which he did, and that the land thus lotted, embraced some timber land. Some years afterwards, Eleazer Coburn and sons having purchased that township, employed him to measure off the Heald tract, and to survey and run a line between the Ford tract and the Coburn reserve, so as to include in the Ford tract all that could be denominated *timber land*—which he did, and embraced a number of the lots in the southwest corner of the town, called the

L of the Ford tract, which he had before surveyed as settling lots. That he has visited this tract several times since he made the last survey, to show persons the lines of the Ford tract. That he went there in the summer of 1836, with Messrs. Wescott, T. G. Mitchell, Kilgore, Libbey, and Thompson, some of whom were interested in the land, and shew them the lines. That Luther Moore and Moses Chamberlain were there at the same time. That some time in the summer of 1837, he visited the tract in company with Thomas Chase and one Hastings, and they then shew him the place where they had before encamped, in a small glade of pine timber on the Coburn reserve; and Chase and Haskins alleged that they had visited that glade, and estimated and accounted the timber thereon, as on the Ford tract, at the time when they made their estimate for the proprietors or purchasers some time previous. That there is, in his opinion, about fifty thousand feet of timber in that glade, lying on a small creek, nearly south from the centre of the town, and, to the best of his judgment, more than half a mile south of the line which he ran between the Ford tract and the Coburn reserve.

The said deponent further answers, that it sometimes is the case, that explorers go over the line without observing it. That he is well acquainted with Jonas Brown—that he has the fullest confidence in his integrity—that he has often been employed, and has had much experience as an explorer—and that he has no belief that said Brown could, by any means, be induced to testify or to give a certificate of any thing that he does not believe to be true; that he has known purchases and sales to be made from estimates made by him, and from his exploring, wherein the several parties appeared to be well satisfied, and of which no complaint has come to his knowledge.

And in answer to the cross interrogatories, filed as aforesaid, the said deponent answers: That he was shown the tract or glade of timber on the Coburn reserve, near the Ford tract, as he has stated in his answer in chief, by Thomas Chase, and by Haskins and Molineux, of Boston, in the summer [of] (he thinks in June) 1837. That Luther Moore and Moses Chamberlain were present. That the quantity of good pine timber in the above glade was very small, compared with the timber of a good quality which was formerly on the Ford tract. That he is not able to state what the proportion is, but that it bore but a small proportion.

JOSEPH SPAULDING.

STATE OF MAINE, *Somerset, ss:*

On the first day of August, and the year of our Lord one thousand eight hundred and thirty-eight, the within named deponent was examined, and cautioned, and sworn, according to law, to the foregoing deposition, and answers to the interrogatories propounded to him, taken at the request of William C. Mitchell and others,

pursuant to a commission from the Circuit Court of the United States, to be used in an action now pending therein, between them and Otis Daniell, subscribed and sworn to.

Before me, WILLIAM ALLEN, Jr.
Justice of the Peace.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Testimony of Thos. Chase.

Thomas Chase, the witness named in the commission hereto prefixed, deposes on oath, and makes answer to the interrogatories annexed, filed in the Circuit Court of the United States, Maine district, and propounded to him, in the matter or bill between Otis Daniell, complainant, and William C. Mitchell and others, defendants, as follows, to wit:

To the *first interrogatory*, in chief, the said deponent answers: That he resides in *Concord*, in the county of Somerset, and is thirty-one years of age; and to the residue of that interrogatory, he answers yea—that he has been employed in that business, more or less, ten or twelve years; has explored for and with Esq. Coburn, and Esq. Redington, and others; and has been engaged four winters in the logging business.

To the *second interrogatory* the said deponent answers: That they generally go through the tract, see what length the body of timber is, see what size the timber is generally; then make some calculation to see what timber there is on an acre or two acres; then make up an opinion as to the number of acres in the tract; that he never saw explorers scale, measure, and count, each timber tree on the tract; and so, by actual measure and scaling, take an account of all the trees, to ascertain the quantity of timber on the tract; but the usual and common course is to make a general estimate, according to the best of their skill and judgment, of the quantity in the several glades or berths of timber they explore, without measuring. That he cannot tell how long it would take an explorer, who was well acquainted with the business, to scale and measure every tree on the tract of timber land called the Ford tract, in Mayfield, so as to get the exact amount of timber, but he thinks seven or eight months.

To the *third interrogatory* the said deponent answers: That he was employed by said Haskins to explore the Ford tract in June, 1835, and that said Haskins, Molineux, and Todd, accompanied the party that Luther Moore assisted. That he was with them on the

tract three days—and afterwards spent three days more on the tract with said Luther Moore. After they had spent the three first days, it became necessary to send about three miles for a further supply of provisions, and Haskins and Molineux then concluded to come in, and not to go any farther themselves; and that this deponent and said Moore went out and completed the exploration, no other person being present. That, according to the best of his recollection, he estimated the whole at four and an half thousand feet to the acre, including pine and spruce; and that this estimate was according to the best of his skill and judgment. The estimate was made fairly, and that he is now satisfied with the estimate, from all that he knows about the tract. That neither said Todd nor Wescott offered, or promised him, any sum of money, or reward, or compensation, to induce him to estimate the quantity of timber high; that they, nor either of them, made use of any arts, or resorted to any means, to mislead him, or deceive him, so as to lead him to over estimate the quantity of timber on the tract.

To the *fourth interrogatory* the said deponent answers generally: *Nay*—that said Wescott and Todd held no private conversation with him, to induce him to act unfaithfully towards the said Haskins and Molineux, in making the exploration. That he was not led through the same glade twice instead of once only. There was one place, where he has since ascertained, by being present with the surveyor, Joseph Spaulding, Esq., where they went over the line, and off of the Ford tract, and took an account of a glade of timber estimated at sixty thousand feet; when he took the account of this glade, he did not know that it was over the line. That he expects that it was by accident, and not by design, not knowing where the line was. That he went out in 1837, with said Spaulding, on purpose to ascertain the fact, whether that glade of timber was on the Ford tract or not, and to see the lines.

To the *fifth interrogatory* the said deponent answers: That the said Haskins, on examining and seeing the scale of some logs in the stream which they saw on their way home, appeared to be satisfied with the estimates made, and said that he then thought that said deponent had set the quantity on the tract low enough. That he does not recollect that said Haskins, as agent for the purchasers, said they would purchase without further exploration, but he appeared to be satisfied, and concluded not to explore any more himself. That neither said Wescott and Todd, nor either of them, made use of any arts or means to deter said Haskins from exploring further; but, on the contrary, said Wescott proposed to send for more provisions, if said Haskins would go further.

To the *sixth interrogatory* the said deponent answers: *Yea*—that he is reputed to be well acquainted with timber and timber lands, and is reputed to be a good explorer, and well skilled in estimating the quantity of timber standing on a tract explored by him for that purpose. That he has often been employed in that business. From

what said deponent knows of said Brown, and of his reputation, he says that, in his opinion, he may be depended on as an explorer.

THOMAS CHASE.

And to the cross interrogatories filed as aforesaid, the said deponent answers to the *first*, that he knew where the north line of the tract was. Luther Moore was with the party, and said that he knew the lines and boundaries of the Ford tract. That he now knows that they went off at one place, as stated in his answer in chief, having since been shown the line near that place by Joseph Spaulding, Esq. That the timber in that glade bore but a very small proportion to the timber on the Ford tract; that he estimated that glade at sixty thousand feet. That he does not know whose duty it was to furnish provisions. That they were, at the end of three days, nearly out of provisions, and could not procure a supply without sending three miles, which said Wescott proposed to do; but said Haskins and Molineux concluded that it was not best, and declined exploring further.

To the *second cross interrogatory* the said deponent answers: *Nay*—that he did not pay said Levi G. Fletcher any part of the money he received for his services for such exploration, nor did he ever tell any one that he did, that he recollects. He however states, that at the time he went out to make the exploration of the Ford tract, as he has above stated, he left a bill against one Morse for services—driving logs from Moose Head lake, amounting to about one hundred and forty dollars—with said Fletcher to collect. That said Fletcher collected the money, retained part of it that he owed him, and paid the balance to said deponent.

THOMAS CHASE.

STATE OF MAINE, *Somerset, ss:*

On the first day of August, in the year of our Lord one thousand eight hundred and thirty-eight, the above named Thomas Chase was examined, and cautioned, and sworn, agreeably to law, to the foregoing deposition and answers to the interrogatories propounded to him, by him subscribed, taken at the request of William C. Mitchell and others, pursuant to a commission from the Circuit Court of the United States, and to be used in an action now pending therein between them and Otis Daniell.

WILLIAM ALLEN, Jr.,
Justice of the Peace.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed—this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Testimony of Jonas Brown.

Jonas Brown, the witness named in the commission hereto prefixed, deposes on oath, and answers the interrogatories filed in the Circuit Court of the United States, Maine district, and propounded to him in the matter or bill between Otis Daniell, complainant, and William C. Mitchell and others, defendants, as follows, to wit:

The said deponent, in answer to the *first interrogatory*, says: That he resides at the Forks of the Kennebec river. That his age is forty-one years. That he has been well acquainted with timber and timber lands. That he has often been employed in exploring timber lands for eight years past, and in estimating the quantity of timber standing and growing on timber lands. That he considers himself well acquainted with the business, and with the lumbering business generally, and has been engaged in the business for twenty-five years past.

To the *second interrogatory* the said deponent answers: Yea—that he was well acquainted with that tract four and five years ago. That he has been on said tract, or across it, eight times. That he lumbered on the tract about eight months in 1833 and 1834.

To the *third interrogatory* the said deponent answers: Yea, and that he explored it for the purchasers, and once in company with William Wescott in May, 1833, who was exploring to buy himself. That he went at the request of said Wescott.

To the *fourth interrogatory* the said deponent answers: That the usual course of explorers acquainted with the business of exploring, is to go on to a high ridge or elevation on the tract, take a compass, and climb with it to the top of a tree where the timber can be seen to a considerable distance, set their compass, and take the course or bearings of the several glades of timber in sight, and then to go to those glades. When they arrive at the glades, they make a general estimate, according to the best of their judgment, as to the quantity and quality of the timber, but do not undertake to actually scale or measure the trees, or take an account of the number, and so ascertain, by actual scaling, measuring, and counting of the trees on the tract, the quantity of timber on the same; but, as he has above stated, they make an estimate merely, according to their best skill and judgment, of the quantities in the various berths and glades. That, in his opinion, it would have taken a man six months or more (who was well acquainted with the business) to actually scale, and measure, and take an account of every timber tree standing on the Ford tract when he explored it.

To the *fifth interrogatory* the said deponent answers: That he has stated before, the time when he explored the Ford tract in company with William Wescott—namely, in May, 1833—that he does not recollect positively whether he gave him a certificate stating the amount or quantity of timber, or not; but if he did give him a

certificate, he therein gave it according to the best of his judgment. Said Wescott's object in having said tract explored was with a view to making a purchase of timber land. Said Wescott and his brother David at that time contemplated purchasing the Ford tract. That neither said William Wescott, nor any other person for him, ever endeavored to persuade said deponent, or indnce him to estimate the quantity of timber high or higher than its actual amount in his judgment; but on the contrary, said William Wescott cautioned him not to over-estimate the quantity, and to be sure to keep within bounds by putting the whole at as low an estimate as, in his judgment, the actual state of the tract and quantity of timber thereon would admit.

To the *sixth interrogatory* the said deponent answers: That he did not, at any time, knowingly and intentionally give said William Wescott any certificate by which an over-estimate was made of the quantity of timber on said Ford tract; but that whatever certificate he gave him was in fact according to his best skill and judgment at that time. That if he gave a certificate that there was on said tract "fifty millions, to speak within bounds, of prime pine timber, that is to say, as good as any on the Kennebec waters," the words "and spruce" were, or ought to have been, inserted after the word pine.

To the *seventh interrogatory* the said deponent answers: *Yea*—and that he cut two millions four hundred thousand feet. That the fact of lumbering on that tract to that extent, if the same had been driven to market that season, would have had a tendency to bring the tract into notice, and would have increased, rather than diminished, the value; but the timber was not got to market that year, and therefore the lumbering to that extent diminished the value of the tract.

To the *eighth interrogatory* the said deponent answers: Yea—that his reputation is good as an explorer. That from the knowledge he has of said Chase, he should confide in his opinion in estimating timber. That he is called a good judge of timber.

JONAS BROWN.

In answer to the cross interrogatories the said deponent answers, to the first interrogatory: That he did not estimate the pine timber separate from the spruce timber on the Ford tract. That there was, in his opinion, about an equal quantity of pine and spruce timber on said tract: there might be, in his opinion, at that time thirty million of pine timber as good as any then upon the Kennebec waters, upon said tract. That he has not been over the tract, so as to form any estimate of the timber, since 1834. That he went to the tract to show the lines to a Mr. Foxcroft, in 1835, but then made no estimate of the timber. That he will not say under oath, and that he does not believe, that there was on said Ford tract, in the spring of 1833, fifty million feet of as good pine timber as was on the Kennebec waters; but he does say that he believes that there was more than half that quantity.

To the *second cross interrogatory*, the said deponent answers: That he explored the Ford tract in the spring of 1833, at the request of William Wescott, who agreed to pay him, and did pay him, two dollars a day for the time he was employed and no more. That he does not [recollect] that he gave or made any certificate, and has no recollection of delivering a certificate to any one, but it is possible that he did give a certificate of the amount of timber.

To the *third cross interrogatory*, the said deponent answers: That he lumbered on said Ford tract in 1333 and 1834, at the request of David Wescott, and as the agent of said David Wescott and William Wescott, and on the northeasterly part of said tract, with six teams. That he does not recollect the number of men. That they cut and hauled two million four hundred thousand feet. That he was paid one dollar and fifty cents a day, which was less by fifty cents a day than he expected to have received when he commenced. That he was employed in lumbering by said David Wescott in 1832 and 1833, on the Chase stream tract, up the Kennebec, but that he was not employed but one season on the Ford tract. That he explored a tract of timber land on the river, in 1835, for said David and William Wescott, but other than the above he has never been employed by said David and William.

JONAS BROWN.

STATE OF MAINE, *Somerset, ss:*

On this first day of August, in the year of our Lord one thousand eight hundred and thirty-eight, the within named deponent was examined, and cautioned, and sworn, according to law, to the foregoing deposition and answers to the interrogatories propounded to him, by him subscribed, taken at the request of William C. Mitchell and others, pursuant to a commission from the Circuit Court of the United States, Maine District, to me directed, and to be used in an action now pending therein between them and Otis Daniell.

WILLIAM ALLEN, JR.,
Justice of the Peace.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed, this being the day for publication of the testimony according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Defendant's Commission.

UNITED STATES OF AMERICA,

Maine District, ss: First Circuit.

The Circuit Court of the United States, begun and holden at Portland, within and for the Maine District, on the first [L. S.] day of May, in the year of our Lord one thousand eight hundred and thirty-eight.—To James L. Child, of Augusta, in said district, Esquire.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories herunto annexed, of Samuel Homans, a witness to be produced and examined in behalf of the defendants, to be used in a certain cause now pending in said court, wherein Otis Daniell, of Boston, is plaintiff in equity, against William C. Mitchell and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witness as aforesaid to be brought before you, and while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same so taken and subscribed, to return, together with this commission, and your doings herein enclosed, sealed and directed to the Circuit Court aforesaid, next to be holden at Wiscasset, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto annexed.

Witness the Honorable Roger B. Taney, at Porland, this thirteenth day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

J. MUSSEY, *Clerk.*

Defendant's Interrogatories.

CIRCUIT COURT OF THE UNITED STATES, *Maine District.*

In the matter or bill there pending of Otis Daniell, complainant, vs. William C. Mitchell and als.

Interrogatories to be propounded in behalf of the defendants to Samuel Homans.

Interrogatory first. Please state whether or not you have been engaged the present season in driving logs out of the Austin stream so called, and by whom, and for whose benefit, and in whose behalf you have been so employed. Say whether or not the stream is such, that logs may, with proper care, be floated thereon from the Ford tract to Kennebec river. Have you or have you not been able to get out from said stream, all or nearly all the logs that were in it at the commencement of the present season? Was or was not Otis Daniell, of Boston, a part owner of the logs driven by

you on said stream? State where said logs came from, according to the best of your knowledge.

Interrogatory second. What quantity of logs have you driven the present season, which came from the Ford tract? What quantity have you driven for said Otis Daniell, Robert W. Molineux, and others, part owners of the Ford tract? Is there any difficulty in getting logs to market, when turned into said Austin stream at the periods of the usual freshets, if proper attention is paid to the business.

WM. P. PREBLE,
Solicitor for Defendants.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
June 18, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

June 21, 1838, served an attested copy of the foregoing by transmitting same by mail to Peleg Sprague, Esquire, solicitor for plaintiff, with notice to file cross interrogatories on or before the seventh day of July next, the day on which a commission would issue herein, according to the rules.
Attest: J. MUSSEY, *Clerk.*

A true copy from the original on file.
Attest: J. MUSSEY, *Clerk.*

Testimony of S. Homans.

I, Samuel Homans, of Vassalboro', in the county of Kennebec, Esquire, having first been duly cautioned, and sworn, do on oath depose and answer to the following interrogatories, successively put to me by James L. Child, Esq., as follows, viz:

In answer to the *first interrogatory*, I say, that I have been engaged the present season in driving logs out of the Austin stream so called. I acted as agent in the business for William D. Little, and others, and my authority for so doing is contained in a communication now in my possession, of which the annexed paper, marked A, is an exact copy. I know not for whose benefit said logs were driven out of said stream, any further than said original paper, of which the annexed is a copy, discloses.

Said original communication was handed to me by one of the drivers of a stage between Augusta and Portland, very soon after its date. The Austin stream is such, that in ordinary freshets, logs, with customary care and attention in driving, may be floated thereon from the Ford tract so called to Kennebec river. I have actually driven out of said Austin stream, at least three-fourths of all the logs that were in the stream, at the commencement of the present season, into the Kennebec river.

I cannot say whether Otis Daniell, of Boston, was or was not, is or is not, a part owner of the logs driven by me out of said Austin stream. I have no acquaintance with said Otis Daniell; never received any communication from him, and never heard his name mentioned in connection with said logs on said Ford tract of land. Said logs did come from the Ford tract, as I have before stated.

In answer to the *second interrogatory*, I depose and say, that I cannot state accurately, what quantity of logs have been driven by me, the present season, from the Ford tract, under the authority before mentioned, out of the Austin stream, as they have not been collected together as yet; but, from the best judgment I am able to form, I should think the quantity would not vary much from three and an half millions. I do not know whether or not I have driven any logs from said Ford tract, of which Otis Daniell, Robert Molineux, and others, are owners in part. Neither do I know whether they are the owners in whole or in part of said Ford tract, or of any logs cut thereon, or any run down the Austin stream. There is no difficulty in getting logs to market, when turned into said Austin stream, at the periods of the usual freshets, if proper attention is paid to the business of driving.

SAMUEL HOMANS.

KENNEBEC, *ss:*

On the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and thirty-eight, the aforesaid deponent, Samuel Homans, was examined, and cautioned, and sworn, agreeably to law, to the answers to the several interrogatories aforesaid by him signed, which were by me successively administered to him, under, and by virtue of, the commission addressed to me, which is hereunto annexed; and to be used in a certain cause in which Otis Daniell is plaintiff in equity, against William C. Mitchell, and others, defendants, pending in the Circuit Court of the United States next to be holden at Wiscasset, within and for the Maine district, on the first day of October, A. D. 1838.

JAMES L. CHILD,
Commissioner, as aforesaid, and a Justice of the Peace.

The following is a copy of the communication marked A, referred to in the foregoing deposition.

Attest: JAMES L. CHILD.

Defendants' Exhibits.

A.

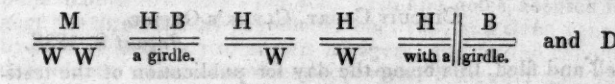
PORTLAND, *March* 17, 1837.

SAMUEL HOMANS, Esq:

DEAR SIR: The subscribers being the proprietors of one half of the *Ford tract logs*, owned in common with Elijah Grover, of Solon, are desirous of having some one to take charge and supervision of

their interest therein; and Mr. Waterhouse having had some conversation with you upon the subject, we therefore write you for the purpose of constituting you our agent for that purpose. We wish you to take the entire direction and management of our interest, and to do all matter and things, whatsoever, that may be necessary, in order amply and fully [to] secure, save, and drive said logs. It will be necessary for you to see Mr. Grover immediately, and make whatever arrangements, if any, may be necessary for the purpose of securing any of said logs which may have run out to the Kennebec; and as whatever is done must be done for the benefit of all concerned, it will of course be necessary to act in concert with him, so far as is practicable, that there may be no collision, or unnecessary trouble and expense. One set of hands which he will employ, probably with what men you may need for driving your own logs, will probably be all that is necessary. You will, of course, do that which you may judge best for our interests. Mr. Grover will undoubtedly do all that he may deem nccessary and practicable, on his part; but we want some one on our part to render him some assistance, and to see that nothing is left undone or misapplied, and to do all that can be done to get them to market, and to see that suitable men are employed, and that no unnecessary waste is made; and that every thing may be accounted for, and that no unreasonable charges are made for what is done. You will, therefore, do and act just the same as if you were joint owner with him in the running, booming, survey, and sale of them, if not sold before running out.

If possible, we wish you to make sale of them where they now lie, at the scale, on the best possible terms, for *undoubted security*, on such time as is customary in such cases. Will see what are the best offers you can get, and advise us. If they cannot be disposed of at this time, perhaps they can in the course of a few weeks on better terms. You of course being well acquainted with this business, we confide in your good judgment. We likewise wish you to ascertain, if possible, how many of said logs have been run out and sold, to whom, and what has been received for them by Mr. Grover, and get him to send us an account current. The marks and numbers are as follows, viz:



and D notch, and W notch, o—scale mark in the end is x with marking iron. In the whole quantity, as per survey bills of Messrs. Bradbury and Brown, there is about five million feet; we are proprietors of one half and Grover the other. Had you not better make us an offer?

Should like to hear from you. Please write us on reception of this, and oblige

Yours, very respectfully,
WILLIAM D. LITTLE, prop. of 1-8.
I. WATERHOUSE, " 3-16.
THOS. WARREN, " 1-16.
DAVID WESCOTT, for himself, and MASON GREENWOOD, 1-16.
ELIZA WESCOTT, adm'x of the estate of William Wescott, 1-16.

P. S. The exact quantity, as per survey bill, is 4,958,663 feet, and were surveyed as follows, viz:

By Abner Bradbury, 2,526,193
Thomas Brown, 2,432,470

4,958,663 feet.

P. S. It is possible that some of them may have been driven back into the woods, in the fall freshet. We wish you would see to that immediately, and have every thing done that is possible to get them out clean. There is a tackle and fall, with other driving apparatus, at the camps on the ground.

Please see Mr. Grover immediately, and know what is to be done, and let no time be lost, and write us. We should like to know how many of our logs were disposed of at Fairfield last season; and will you get the surveyor to give you the quantity, if he can, at each place where any were sold. In order to be more distinct, I give you the marks here.

M H H H B H ‖ B
W W W W with a girdle, and

D notch 1, W 1 notch—scale mark on the end is thus, x, with a marking iron. In haste, yours, &c.

The foregoing, marked A, is a true copy of the original letter referred to in the deposition aforesaid.

Attest: JAMES L. CHILD,
Justice of the Peace.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
August 8, 1838.

Opened and filed, this being the day for publication of the testimony, according to the entry in this cause.

Attest: J. MUSSEY, *Clerk.*

Set down for hearing.

And at the October term next following, on motion of plaintiff's solicitors, said cause is set down for a hearing thereof at the next term of this court, and the same was thence continued.

And, on the thirteenth day of April, A. D. eighteen hundred and thirty-nine, the plaintiff's solicitors filed the following bill of revivor, viz:

Bill of Revivor vs. *M. Wescott.*

CIRCUIT COURT OF THE UNITED STATES,
First Circuit, Maine District.

To the honorable justices of the Circuit Court of the United States, for the First Circuit, Maine District.

Complaining, shows unto your honors your orator, Otis Daniell, of the city of Boston, in the county of Suffolk, and State of Massachusetts, a citizen of the said State of Massachusetts, merchant; that on or about the nineteenth day of July, A. D. 1836, your orator filed his bill of complaint in this honorable court against William C. Mitchell, David Wescott, William Wescott since deceased, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren and James Todd, all of Portland, and William B. Gooch of North Yarmouth in said district, gentlemen and citizens of the State of Maine, stating therein that the said defendants were, or claimed to be, owners of certain undivided portions of a certain tract of land in said State of Maine called the Ford tract, and employed said James Todd to contract for the sale thereof, and gave him a certain bond authorizing him to dispose thereof as he should see fit, and delivered to him certain certificates respecting the same; and that said Todd employed one Thomas W. Haskins to aid him therein, representing that it contained a large quantity of timber, viz: sixty millions feet or sufficient to make the same in boards, with convenient streams for floating the same. And further, that upon such statements and representations, assertions and assurances, as are therein set forth, your orator agreed to purchase three undivided sixteenth parts of said tract, on condition that the same should contain sufficient good pine timber to make sixty million feet of boards according to a certain written agreement; and that in consequence of the premises and some further explorations as therein set forth, influenced by the proceedings therein set forth, and upon the strength and faith of the same, your orator was induced to purchase three sixteenths and one thirty-second part of said tract, and afterwards seven thirty-second parts more at five dollars per acre, cash and notes, secured by mortgage for three fourths payable in one, two, and three years, taken by said Todd wholly or in part as agent, and for the benefit of the defendants, who received and appropriated the said cash and notes to their own use—and further, complaining that the said tract did not contain in fact near so much good pine timber, nor more than enough to make five millions feet of boards, and that it was worth much less than it was represented; and that the plaintiff had requested the defendants to rescind the purchase and restore the money, and discharge the securities, and requesting the defendants to set forth their respective interests in the tract or sale, and what portion of the consideration or benefit each of them derived, or ex-

pected to receive from the sale; how the cash and notes were divided and appropriated or disposed of among them, and stating more fully as therein stated, and praying as therein prayed, and that the cash may be repaid, and said notes to be cancelled or equivalent rendered with interest, and the mortgage discharged, and the plaintiff indemnified for his expenses and damages, and for further relief.

And your orator further shows, that the said William C. Mitchell, David Wescott, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, and James Todd, and William B. Gooch, being duly served with process, appeared and made answers to the said original bill, and the said cause being at issue, testimony taken, and publication thereof ordered and made, the said cause stood for hearing at the last term of this honorable court.

And since such proceedings were had as aforesaid, your orator further shows, that on or about the tenth day of February now last past, the said David Wescott departed this life; and that since his death, letters of administration on his goods and estate have been duly granted by the judge of probate, for the county of Cumberland, to Mary Wescott, of Portland, in said county, widow, a citizen of said State of Maine.

And your orator further shows unto your honors, that the said suit having become abated by the death of said David Wescott, as to him, as one of said defendants, he is as he has been advised, entitled to have the same revived against the said Mary Wescott as administratrix of said David, in order the same proceedings may be had thereon, and prosecuted against her, the said administratrix, in like manner as they could or might have been against the said David, the late defendant, if he had been still living. To the end, therefore, that the said Mary Wescott may show cause, if she have any, why the said suit and proceedings therein should not stand and be revived against her as such administratrix of the said David Wescott as aforesaid, and be in the same plight and condition as the same were at the time of the abatement thereof as aforesaid against the said David, and that the said suit and proceedings had therein may stand and be revived accordingly.

May it please your honors to grant unto your orator your writ of subpœna to revive, issuing under the seal of this honorable court, to be directed to the said Mary Wescott, as she is such administratrix of the goods and estate of said David Wescott, commanding her by a certain day, and under a certain penalty to be therein expressed, personally to be and appear before your honors in this honorable court, and then and there to show cause, if any she have, why the said suit and proceedings therein had should not stand and be revived against her, and be in the same plight and condition as the same were at the abatement thereof—and further, to stand to and abide such order and decree in the premises, as to your honors shall seem meet. And your orator shall ever pray.

By PELEG SPRAGUE & C. S. DAVEIS,
Solicitors.

Whereupon the following subpœna issued, viz:

Subpœna.

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

L. S. To Mary Wescott, of Portland, in the State of Maine, administratrix of the goods and estate which were of David Wescott, late of said Portland, Esquire, deceased, greeting:

For certain causes offered before the Circuit Court of the United States, for the First Circuit, as a Court of Chancery.

We command, and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally appear before the said circuit court next to be holden at Portland, within and for Maine district, on the first day of May next, to answer concerning those things which then and there may be objected against you by Otis Daniell, of the city of Boston, and State of Massachusetts, merchant, and a citizen of said State, and to do further and receive that which said court shall do and order in this behalf. And this you are in no wise to omit. And have you there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States of America, at Portland, the thirteenth day of April, in the year of our Lord one thousand eight hundred and thirty-nine.

J. MUSSEY, *Clerk.*

Return of Subpœna.

Which subpœna is on the said first day of May, A. D. eighteen hundred and thirty-nine, returned into said court with the following endorsement thereon, viz:

MAINE DISTRICT, *ss:*

April 13*th*, 1839.

I have this day summoned the within named Mary Wescott to appear at the time, place, and for the purpose within mentioned, by giving her in hand an attested copy of this precept.

JOHN HARRIS, Jun., *Deputy Marshal.*

Appearance.

And on said first day of May, upon the return of process executed as aforesaid, the said Mary Wescott, administratrix, appears by William P. Preble, Esquire, her solicitor.

Order for, revived.

Whereupon the solicitor for the plaintiff moves the court here, that the said suit and proceedings abated as aforesaid by the death of the said David Wescott may stand revived, and be in the same plight and condition against the said Mary Wescott, in her said capacity of administratrix, as they were in at the time of the death of the said David Wescott.

It is thereupon ordered by the court, that the said suit and proceedings do stand revived, and be in the same plight and condition

against said administratrix as they were in at the time of the death of the said David Wescott, defendant as aforesaid.

Upon further motion of the plaintiff's solicitor, it was prayed that the plaintiff may be at liberty to examine one or more witnesses, viva voce, in this cause, to prove the exhibits numbered "one" and "two," saving all just exceptions, which is ordered accordingly. And Calvin Slade and Stephen J. Rogers, were severally on oath examined, touching the exhibits following, viz:

Plaintiff's exhibits.—Exhibit "one."

It is understood and agreed between T. W. Haskins and Otis Daniell, their heirs and assigns, that the said Daniell shall take and hold for said Haskins one thirty-second part of 16,000 acres undivided of land in Maine, called the Ford tract, and that the said Haskins shall pay therefor, in cash, on demand, six hundred twenty-five dollars, and the balance in one, two, and three years, from June 29th, with interest annually.

It is further agreed that, if said Haskins shall sell said land by authority of a bond this day given, that said Daniell shall be entitled to receive the same price for his six thirty-second parts that the lot is sold at.

OTIS DANIELL,
T. W. HASKINS.

Boston, *July* 3, 1835.

Know all men by these presents, that I, Thomas W. Haskins, above named, for a full and valuable consideration to me paid by Otis Daniell, above named, the receipt whereof is hereby acknowledged, do hereby release and forever discharge the said Daniell from all claims and demands of every kind and nature which have arisen or may arise from a suit in equity now pending in the Circuit Court of the United States for the District of Maine, between said Daniell and William C. Mitchell and others; and all claims and demands of every kind and nature which have arisen or may arise from or out of the land mentioned in the bill in said suit, called and known as the Ford tract; and all claims and demands of every kind and nature which have arisen or may arise from or out of the purchase, or any contract respecting the purchase, of any part of said Ford tract.

In witness whereof I have hereunto set my hand and seal this seventh day of August, in the year eighteen hundred and thirty-seven.

THOS. W. HASKINS, [L. S.]

In presence of M. Crooker.

Maine District, *ss:*

Circuit Court, May Term, 1839.

On the first day of term, Calvin Slade appears in open court, and on oath declares that he well knows the handwriting of the above

named Crooker, the subscribing witness to this exhibit; that the same is in his handwriting, that he is now at Barry, in Massachusetts; which exhibit is filed in the case of Otis Daniell, in equity, *vs.* William C. Mitchell & als.

Attest: J. MUSSEY, *Clerk.*

Exhibit "two."

Know all men by these presents, that I, Otis Daniell, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, merchant, for a full and valuable consideration to me paid by Thomas W. Haskins, of said Boston, trader, do hereby release and forever discharge the said Haskins from all claims and demands of every kind and nature which have arisen or may arise from or out of a suit in equity now pending in the Circuit Court of the United States for the District of Maine, between me, the said Daniell, and William C. Mitchell and others; and all claims and demands of every kind and nature which have arisen or may arise from or out of the land mentioned in the bill in said suit, called and known as the Ford tract; and all claims and demands of every kind and nature which have arisen or may arise from or out of the purchase, or any contract respecting the purchase, of any part of said Ford tract.

In witness whereof, I have hereunto set my hand and seal this seventh day of August, in the year eighteen hundred and thirty-seven.

OTIS DANIELL, [L. S.]

In presence of S. J. ROGERS.

MAINE DISTRICT, *ss:*

Circuit Court, May Term, 1839.

On the first day of term, Stephen J. Rogers, the subscribing witners, appears in open court, and on oath proves the execution of the above exhibit, filed in the case of Otis Daniell, plaintiff in equity, *vs.* William C. Mitchell & als.

Attest: JOHN MUSSEY, *Clerk.*

And said cause was thence continued to the next October term; and from said October term the same was further continued.

And on the fourteenth day of March, A. D. one thousand eight hundred and forty, the plaintiff's solicitor filed the following bill of revivor, viz:

Bill of Revivor vs. *W. Storer, Adm'r.*

CIRCUIT COURT OF THE UNITED STATES,
First Circuit, Maine District.

To the honorable the Justices of the Circuit Court of the United States for the First Circuit, Maine District.

Complaining, shows unto your honors your orator, Otis Daniell, of the city of Boston, in the county of Suffolk, and State of Massa-

chusetts, merchant, a citizen of said State of Massachusetts, that on or about the nineteenth day of July, anno domini 1836, your orator filed his bill of complaint in this honorable court against William C. Mitchell, David Wescott, and William Wescott since deceased, Tristram G. Mitchell, Erastus Hayes, Israel Waterhouse, Thomas Warren, and James Todd, all of Portland, and William B. Gooch of North Yarmouth, in said district, gentlemen, and citizens of the State of Maine, stating therein that the said defendants were or claimed to be owners of certain undivided portions of a certain tract of land in said State of Maine, called the Ford tract, and employed said James Todd to contract for the sale thereof, and gave him a certain bond, authorizing him to dispose thereof as he should see fit, and delivered to him certain certificates respecting the same; and that said Todd employed one Thomas W. Haskins to aid him therein, representing that it contained a large quantity of timber, viz: sixty millions feet, or sufficient to make the same in boards, with convenient streams for floating the same.

And further, that upon such statements and representations, assertions and assurances, as are therein set forth, your orator agreed to purchase three undivided sixteenth parts of said land, on condition that the same should contain sufficient good pine timber to make sixty millions feet of boards according to a certain written agreement; and that in consequence of the premises and some further exploration as therein set forth, and influenced by the proceedings therein set forth, and upon the strength and faith of the same, your orator was induced to purchase three sixteenths and one thirty-second part of said tract, and afterwards seven thirty-second parts more, at five dollars per acre, cash and notes secured by mortgage for three-fourths, payable in one, two, and three years, taken by said Todd, wholly or in part as agent, and for the benefit of the defendants, who received and appropriated the said cash and notes to their own use; and farther, complaining that the said tract did not contain in fact near so much good pine timber, nor more than enough to make five million feet of boards, and that it was worth much less than it was represented.

And that the plaintiff had requested the defendants to rescind the purchase and restore the money and discharge the securities, and requesting the defendants to set forth their respective interests in the tract or sale, and what portion of the consideration or benefit each of them derived or expected to receive from the sale, how the cash and notes were divided and appropriated, or disposed of among them; and stating more fully as therein stated, and praying as therein prayed, and that the cash may be repaid, and said notes to be cancelled or equivalent rendered, with interest, and the mortgage discharged, and the plaintiff indemnified for his expenses and damages, and for further relief.

And your orator further shows, that the said William C. Mitchell, David Wescott, Tristram G. Mitchell, Erastus Hayes, Israel Water-

house, Thomas Warren, James Todd, and William B. Gooch, being duly served with process, appeared, and made answer to the said original bill, and the said cause being at issue, testimony taken, and publication thereof ordered and made, the said cause stood for hearing at the term of this honorable court, holden at Wiscasset, in October, 1838.

That afterwards the said David Wescott departed this life, and this bill having become abated as to him, the same was revived by due proceedings against Mary Wescott, who was duly appointed administratrix, and appearing thereupon, the said bill was duly ordered to stand revived against her in the same manner as against the said David, at the last term of this honorable court at Portland in May last.

And since such proceedings were had therein, your orator further shows, that on or about the the said Israel Waterhouse departed this life, and that since his death letters of administration on his goods and estate have been duly granted by the judge of probate for the county of Cumberland to Woodbury Storer, of Portland, aforesaid, esquire, a citizen of said State of Maine.

And your orator further shows unto your honors, that the said suit having become abated by the death of said Israel Waterhouse, as to him as one of the said defendants, he is, as he has been advised, entitled to have the same revived against the said Woodbury Storer as administrator of the said Israel Waterhouse, in order that the same proceedings may be had thereon, and prosecuted against him, the said administrator, in like manner as they could or might have been against the said Waterhouse, the late defendant, if he had still been living.

To the end, therefore, that the said Woodbury Storer may shew cause, if he have any, why the said suit and proceedings therein should not stand and be revived against him as such administrator of the said Israel Waterhouse as aforesaid, and be in the same plight and condition as the same were at the time of the abatement thereof, as aforesaid, against the said Waterhouse; and that the said suit and proceedings had thereon may stand, and be revived accordingly.

May it please your honors to grant unto your orator your writ of subpœna to revive, issuing under the seal of this honorable court, to be directed to the said Storer, as he is administrator of the goods and estate of said Waterhouse, commanding him by a certain day, and under a certain penalty to be therein expressed, personally to be and appear before your honors in this honorable court, and then and there to shew cause, if any he have, why the said suit and the proceedings therein had should not stand and be revived against him, and be in the same plight and condition as the same were at the abatement thereof; and further, to stand to and abide such order and decree in the premises as to your honors shall seem meet.

And your orator shall ever pray,

By PELEG SPRAGUE & C. S. DAVEIS, *Solicitors.*

Whereupon the following subpœna issued, viz:

Subpœna.

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

To Woodbury Storer of Portland, in the State of Maine, ad-
[L. S.] ministrator of the goods and estate which were of Israel Waterhouse, late of said Portland, deceased, greeting:

For certain causes offered before the Circuit Court of the United States for the First Circuit, as a Court of Chancery:

We command and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally appear before the said circuit court to be holden at the office of the clerk of said court in Portland, in said Maine district, on the first Monday of April next at ten of the clock in the forenoon, to answer concerning those things which then and there may be objected against you by Otis Daniell of the city of Boston and State of Massachusetts, merchant, and a citizen of said State; and to do further, and receive that which said court shall do and order in this behalf. And this you are in no wise to omit. And have you there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the United States of America, at Portland, the fourteenth day of March, in the year of our Lord one thousand eight hundred and forty.

J. MUSSEY, *Clerk.*

Which subpœna is, on the said first Monday, being the sixth day of April, A. D. eighteen hundred and forty, returned into said court with the following endorsement thereon, viz:

Return of Subpœna.

PORTLAND, *March* 16, 1840.

I hereby acknowledge notice of the within, in the same manner as though it had been duly served, and waive any objection to want of form or return on that account, and will appear accordingly; this being done without any further prejudice to myself in any respect than if the same had been regularly served.

WOODBURY STORER,
Administrator, &c.

And on said first Monday of April, upon the return of process, executed as aforesaid, the said Woodbury Storer, administrator, enters his appearance.

Whereupon the solicitors for the plaintiff file the following motion and notice, viz:

Plaintiff's Motion and Notice.

CIRCUIT COURT OF THE UNITED STATES, *Maine District.*

At Rules, Monday, April 6, 1840.

OTIS DANIEL, plaintiff in equity,
vs.
WILLIAM C. MITCHELL and others, defendants.

The said Israel Waterhouse, named as one of the defendants in said bill, having deceased, and the same thereby become abated against him, and a bill of revivor having been duly filed against Woodbury Storer, esquire, a citizen of said State of Maine, as his administrator, and subpœna issued thereon, and due service thereof made, upon said Storer, as appears by his acknowledgment of the same. And the subpœna being now duly returned at this day, and the said Storer appearing thereon, the said plaintiff now moves that the said bill be duly ordered to stand and be revived against the said Storer, as administrator of said Waterhouse, in the same manner and condition that it was at the decease of the said Waterhouse.

And at the same time the plaintiff gives notice to the said defendants, originally named and still living, and the administrators of said David Wescott and Israel Waterhouse, deceased, who were originally defendants, that the cause stands as set down for a hearing, and to be brought thereto, at the next term of this court,

By SPRAGUE & DAVEIS,
Solicitors for the plaintiff.

Order for revival.

It is therefore ordered that the said suit and proceedings do stand revived, and be in the same plight and condition against Woodbury Storer, administrator as aforesaid, as they were in at the time of the death of the said Israel Waterhouse, one of the defendants as aforesaid.

Bill dismissed as to W. Wescott.

And at May term of said court, A. D. eighteen hundred and forty—

Upon motion of the plaintiff's solicitors, it was prayed that the plaintiff may be at liberty to dismiss his suit against William Wescott, one of the defendants named in his said bill of complaint, he, said Wescott, having deceased after service of subpœna and before putting in an answer to said bill; which is ordered accordingly, and the bill is thereupon dismissed, so far as the same related to the said William Wescott, deceased.

And subsequently, at the same term, the following decree was read, passed, and promulged, viz: Otis Daniell, plaintiff in equity, *vs.* William C. Mitchell and others.

Decree, May Term, 1840.

This cause came on to be heard at this term upon the bill, answers, exhibits, and proofs produced by the parties, and was argued by counsel. On consideration whereof, it is declared by the court that the contract of sale, and the conveyance of the premises, and the notes of the said Daniell thereupon, as set forth in the bill, were made by and between the said Otis Daniell and James Todd and other parties, upon material misrepresentations and mutual mistakes as to the quantity of timber on the premises so sold, and, therefore, ought to be set aside, and held null and void; and the said Otis Daniell ought to be repaid the amount of the said purchase money actually paid by him thereupon and therefor, by the said Todd, who received the notes for the same, and in his aid and for his relief, by such of the other parties, defendants to the bill, respectively, for whom the said Todd acted as agent, or who, with a full knowledge of, and assent to, the said contract of sale, and misrepresentations and mistakes, have received any of the said notes or any part of the purchase money paid thereon by the said Daniell, but not for the part thereof received by any other party.

And thereupon, in furtherance of the declarations aforesaid, it is further ordered, adjudged, and decreed, that the same contract of sale, and conveyance, and notes be, and hereby are, annulled, rescinded, and declared utterly void and of no effect.

And the said Otis Daniell is further ordered, adjudged, and decreed to re-convey the same by such due and reasonable conveyance or conveyances as shall be devised and reported by a master, when and so soon as the purchase money actually paid by him shall be repaid as hereinafter mentioned.

And it is further ordered, adjudged, and decreed by the court, that the said James Todd be, and he is hereby, held directly liable to the plaintiff for the whole amount of moneys paid as aforesaid, deducting, however, therefrom the proceeds of timber sold, as well as the value of timber taken from said lands, by and under the authority of the said Otis Daniell, and remaining unsold, and making all due allowances for all proper charges and expenses incurred in regard to said timber, and for taxes paid on the said lands.

And it is further ordered, adjudged, and decreed, that such of the other parties, defendants to the said bill, as with a full knowledge of the premises, or for whom the said Todd acted as agent, or who assented to the said contract of sale and conveyance, with a full knowledge of the premises, shall be, and hereby are, decreed to be liable, in aid and relief of the said Todd, to pay and deliver back to the said Otis Daniell such parts or portions of the purchase money paid by the said Daniell, for the said lands, as have been received by them respectively in the premises, or on the notes of the said Daniell, so received by them; but no one of them to be liable for any purchase money or notes received by either of the other parties defendants.

And it is further ordered, adjudged, and decreed by the court, that no damages or interest on the aforesaid moneys be allowed, except the proceeds of such timber, sold and unsold as aforesaid, furnish a fund therefor, and in that event interest upon said purchase money to be added thereto, as an offset, *pro tanto*, to the excess of said proceeds, and not exceeding the amount of such excess.

And it is further ordered, adjudged, and decreed by the court, that it be referred to Stephen Longfellow, esquire, as master, to ascertain the amount due to the plaintiff, on the basis of this decree, and also the particular notes and sums received, by each of said defendants, of said purchase money, so paid and secured as aforesaid, and to report the same.

And it is further ordered, adjudged, and decreed by the court, that the master be clothed with full power and authorities to examine as well the parties as any other witnesses, orally, or upon written interrogatories, under oath, in the premises, and to require the production of all vouchers, papers, and other documents, pertinent and proper in the premises; and that he state a full account in the premises upon the basis of this decree; and that he be, and hereby is, clothed with all the usual powers and authorities of a master in all things touching the premises.

And all further orders and decrees are reserved for the consideration of the court.

Defendants' motion to stay proceedings.

And after the passing of said decree, during the same term of the said court, and on the fourteenth day of the same month of May, Samuel Fessenden, esquire, appeared as solicitor for James Todd, one of said defendants, and moved the court for a stay of proceedings in said cause, and put in and filed the following affidavit as the ground for said motion, viz:

James Todd's affidavit.

In the cases of Otis Daniel, plaintiff in equity, against William C. Mitchell and others, defendants, and William C. Mitchell and others, plaintiffs in equity, against Otis Daniell:

I, James Todd, of Portland, one of the defendants in the original suit in equity, of Otis Daniell against William C. Mitchell and others, pending in the Circuit Court of the United States, in Maine district, and also one of the complainants in the cross bill of William C. Mitchell and others against Otis Daniell, pending in the same court, ask leave to inform the court, that since the hearing and decree in said suits in equity, pronounced at the present term of said court, May, eighteen hundred and forty, and on the same day said decree was pronounced, he has discovered, for the first time, important evidence having a material and direct bearing upon said suits, and bearing strongly upon a point directly at issue in said cross bill, viz: the

point of a final settlement of the whole matter in controversy between the parties to said suits, which was alleged in the cross bill, and denied in the answer of said Otis Daniell; and which said evidence goes directly and incontrovertibly to show that said Daniell did give Mason Greenwood to understand and believe that the settlement which took place in Boston, testified to by said Greenwood, was a final settlement of the whole controversy between the parties, and applied to and included the bill in equity, Daniell against Mitchell and others. Which evidence is substantially as follows, viz: After said decree had been pronounced, said Daniell came into the office of William P. Preble, esquire, solicitor for said Mitchell and others, and commenced a conversation about said decree. Said Preble then remarked to said Daniell, that if Greenwood had been faithful when he took up the notes, the bill would have been settled. Daniell replied, "No, for we had two or three conversations upon the subject, previous to settling, when it was understood that the bill would be stopped; but I had a private interview with Mr. Sprague, on the subject, previous to our settlement, and he told me I could take up the notes, and it would not affect the bill; therefore, when I was settling with Greenwood, I was solicitous, for fear he would allude to the bill, and I carefully concealed from him the fact that it was not settling the bill." All which is evidence to show that said Daniell practised a fraud upon said Greenwood, and gave him to understand that it was the design of said Daniell to settle the whole controversy, and that it was in fact so understood by said Greenwood.

And I further aver that the above is substantially the conversation of said Daniell, as near as I am able to state it, and was made in the presence of said William P. Preble, who can testify thereto, or to the substantial part thereof, and that I regard it as materially affecting the rights of said Daniell, under his said bill, and as affecting also his answer to the cross bill aforesaid; and that it is the intention of the defendants to said bill of said Daniell, under the advice of counsel, immediately to present to said court a petition for a rehearing or review of both said causes, according to the course of equity proceedings in regard to said new evidence. And for that purpose, and in order that justice may be done, and in behalf of my co-defendants, and co-complainants, as well as of myself, I most respectfully pray, in the first place, that all further proceedings in both said causes may be stayed until the further order of court.

JAMES TODD.

CUMBERLAND, *ss*:

May 13, 1840.

Then personally appeared the above named James Todd, and made oath that the above statement, by him made, is true, to the best of his recollection and belief.

Before me, W. P. FESSENDEN,
Justice of the Peace.

Defendants' motion overruled.

And at the adjournment of said court, holden on the twenty-sixth day of September next following—

It is ordered and declared by the court, that the motion aforesaid, of said defendants, for stay of proceedings, be, and the same is hereby, overruled.

And it is further ordered and declared that said cause proceed forthwith agreeably to the decree herein passed as aforesaid.

Whereupon the said suit was thence continued to the next October term of said court; and, on the first day of said October term, the same was further continued.

And, at May term, A. D. eighteen hundred and forty-one, holden by adjournment on the twenty-first day of August, of the same year, the commission and report of Stephen Longfellow, esquire, appointed master in this cause, was returned, opened, and read in court, as follows, viz:

Commission to S. Longfellow, Master.

UNITED STATES OF AMERICA,
Maine District, ss: First Circuit.

[L. S.] The Circuit Court of the United States, begun and holden at Wiscasset, within and for the Maine district, on the first day of October, in the year of our Lord one thousand eight hundred and forty.

To Stephen Longfellow, of Portland, in said Maine district, esquire:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, as master in chancery, with all the usual powers and authorities of a master, in the matters and things touching the case hereafter named, and to proceed therein in all respects pursuant to the orders and determinations set forth in the decree, a true copy whereof is hereunto annexed, passed in a certain cause now pending in said court, wherein Otis Daniell is plaintiff in equity, against William C. Mitchell and others, are defendants, and to report thereof, and therein, fully and particularly in writing, according to the basis of said decree, passed as aforesaid.

And to this end, at certain days to be by you appointed for that purpose, to cause said parties and their witnesses as aforesaid, to be brought before you, and the same, while present before you, to examine carefully, on oath, touching the premises.

And when you shall have taken the examination as aforesaid, and stated the accounts, and made up the report or reports contemplated and required by said decree, to return the same, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Portland, on the first day of May next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this twenty-second day of October, in the year of our Lord one thousand eight hundred and forty.

J. MUSSEY, *Clerk.*

Copy annexed.

Master's Commission.

MAINE DISTRICT, *ss:*

Circuit Court, May term, 1840.

Otis Daniell plaintiff in equity *vs.* William C. Mitchell and others.

This cause came on to be heard at this term, upon the bill, answers, exhibits, and proofs, produced by the parties, and was argued by counsel; on consideration whereof, it is declared by the court, that the contract of sale, and the conveyance of the premises, and the notes of the said Daniell thereupon, as set forth in the bill, were made by and between the said Otis Daniell and James Todd, and other parties, upon material misrepresentations and mutual mistakes as to the quantity of timber on the premises so sold, and therefore ought to be set aside and held null and void; and the said Otis Daniell ought to be repaid the amount of said purchase money actually paid by him thereupon, and therefor, by the said Todd, who received the notes for the same, and in his aid, and for his relief, by such of the other parties, defendants to the bill, respectively, for whom the said Todd acted as agent, or who, with a full knowledge of, and assent to, the said contract of sale, and misrepresentations, and mistakes, have received any of the said notes, or any part of the purchase money paid thereon, by the said Daniell, but not for the part thereof received by any other party. And, thereupon, in furtherance of the declarations aforesaid—

It is further ordered, adjudged, and decreed, that the same contract of sale, and conveyance, and notes, be, and hereby are, annulled, rescinded, and declared utterly void and of no effect.

And the said Otis Daniell is further ordered, adjudged, and decreed, to reconvey the same, by such due and reasonable conveyance or conveyances, as shall be devised and reported by a master, when, and so soon as, the purchase money actually paid by him shall be repaid as hereinafter mentioned.

And it is further ordered, adjudged, and decreed, by the court, that the said James Todd be, and he is hereby, held directly liable to the plaintiff, for the whole amount of moneys paid as aforesaid, deducting, however, therefrom the proceeds of timber sold, as well as the value of timber taken from said lands by and under the authority of the said Otis Daniell, and remaining unsold, and making all due allowances for all proper charges and expenses incurred in regard to said timber, and for taxes paid on the said lands.

And it is further ordered, adjudged, and decreed, that such of the other parties, defendants to the said bill, as with a full knowledge of the premises, or for whom the said Todd acted as agent, or who assented to the said contract of sale and conveyance, with a full knowledge of the premises, shall be, and hereby are, decreed to be liable in aid and relief of the said Todd, to pay and deliver back to the said Otis Daniell, such parts or portions of the purchase money, paid by the said Daniell for the said lands, as have been received by them respectively, in the premises, or on the notes of the said Daniell, so received by them; but no one of them to be liable for any purchase money or notes received by either of the other parties, defendants.

And it is further ordered, adjudged, and decreed, by the court, that no damages or interest, on the aforesaid moneys, be allowed, except the proceeds of such timber sold and unsold as aforesaid, furnish a fund therefor, and in that event, interest upon said purchase money to be added thereto, as an offset pro tanto to the excess of said proceeds, and not exceeding the amount of such excess.

And it is further ordered, adjudged, and decreed, by the court, that it be referred to Stephen Longfellow, esquire, as master, to ascertain the amount due to the plaintiff, on the basis of this decree; and, also, the particular notes and sums received by each of said defendants of said purchase money, so paid and secured as aforesaid, and to report the same.

And it is further ordered, adjudged, and decreed, by the court, that the master be clothed with full power and authorities to examine, as well the parties, as any other witnesses, orally or upon written interrogatories, under oath, in the premises, and to require the production of all vouchers, papers, and other documents, pertinent and proper in the premises; and that he state a full account in the premises, upon the basis of this decree; and that he be, and hereby is, clothed with all the usual powers and authorities of a master, in all things touching the premises.

And all further orders and decrees are reserved for the consideration of the court.

A true copy from the original on file.

Attest: J. MUSSEY, *Clerk.*

The execution of this commission appears by the report, which is hereunto annexed, and the deeds accompanying the same.

S. LONGFELLOW, *Master.*

August 16, 1841.

Report of the Master.

UNITED STATES OF AMERICA,
District of Maine, ss: In Chancery.

Between Otis Daniell, plaintiff in equity, and William C. Mitchell and others, defendants.

In pursuance of a decretal order of the honorable Circuit Court of the United States, holden at Portland, within and for the district of Maine, on the first day of May, A. D. eighteen hundred and forty, made in chancery in the above case, I, the subscriber, a master in chancery, by virtue of, and pursuant to, said order, do hereby report, that I have duly notified, met, and heard, the parties by their counsel, on the twenty-fifth day of November, A. D. eighteen hundred and forty, and on the fifth day of April, and the twenty-fifth day of May, A. D. eighteen hundred and forty-one, and at other times, and have heard and considered their several proofs and allegations.

It appears by the evidence in the case, that the plaintiff purchased of the defendants seven thirty-second parts of the sixteen thousand acres of land described in the plaintiff's bill, for which he received a conveyance on the twenty-ninth day of June, A. D. eighteen hundred and thirty-five, and on the same day paid therefor, in cash, four thousand three hundred and seventy-five dollars, and gave his three promissory notes for four thousand three hundred and seventy-five dollars each, payable in one, two, and three years, with interest annually. The plaintiff has paid on said notes seven thousand and thirty-nine dollars and sixty-eight cents, making the whole sum which he has paid for said land, eleven thousand four hundred and fourteen dollars and sixty-eight cents. Of this sum, three hundred and ninety-three dollars and seventy-five cents was paid to David Wescott; three hundred and ninety-three dollars and seventy-five cents to William Wescott; three hundred and ninety-three dollars and seventy-five cents to William C. Mitchell; five thousand six hundred and forty-six dollars and fifty cents to said Tristram G. Mitchell and William C. Mitchell; three hundred and ninety-three dollars and seventy-five cents to said Thomas Warren; two thousand five hundred and seventy-four dollars and forty-six cents to said William B. Gooch; six hundred and seventy-nine dollars and twenty-two cents to said Erastus Hayes; and five hundred and two dollars and three cents to said Israel Waterhouse; and four hundred and thirty-seven dollars and fifty cents to said James Todd.

As no funds have arisen from any timber cut on said land to pay interest, or any part of the principal, the said James Todd, according to the decree of the court, is liable to said Otis Daniell for the whole amount of said sum of $11,414 68.

And the other defendants are liable, in aid of said James Todd, in the following sums, viz:

David Wescott's estate - - -	$393 75
William Wescott's estate - - -	393 75
William C. Mitchell - - -	393 75
Tristram & William C. Mitchell - -	5,646 50
Thomas Warren - - - -	393 75
William B. Gooch - - - -	2,574 43
Erastus Hayes - - - -	679 22
Israel Waterhouse's estate - - -	502 03

This statement, however, is predicated on the ground that the plaintiff was the sole purchaser of seven thirty-second parts of said tract of land, and is entitled to receive the whole amount which he paid for the same, without any deduction. But it is proved in the case, that it was the understanding and agreement between the plaintiff and one Thomas W. Haskins, that the plaintiff should purchase and hold, for the use and benefit of said Haskins, one thirty-second part of said land; and on third day of July, A. D. eighteen hundred and thirty-five, a written agreement was made, by and between said Daniell and Haskins, that said Daniell should take and hold for said Haskins one thirty-second part of said land; in consideration whereof, said Haskins paid said Daniell six hundred and twenty-five dollars, and gave him his three notes of hand for six hundred and twenty-five dollars each, payable in one, two, and three years, from the twenty-ninth day of June, A. D. eighteen hundred and thirty-five, with interest annually. Before either of said notes became due, said Haskins informed the plaintiff that it would be impossible for him to pay either of said notes, but that he would make payments on the first note as fast as he could; and he did pay two hundred and twenty-five dollars thereon. And in the month of May, A. D. eighteen hundred and thirty-seven, it was agreed between them, that the plaintiff should deliver to said Haskins the two last notes on which nothing had been paid, and should retain the other note; and that said Haskins should release the plaintiff from all obligation to hold for his use any part of said land, and from all right which the said Haskins then had to one thirty-second part, or any other part of said land. And on the seventh day of August, A. D. eighteen hundred and thirty-seven, said agreement was carried into execution, and the plaintiff delivered to said Haskins the two notes on which no payment had been made; and mutual releases, under seal, were made and executed between them, which are filed in the case, and to which reference may be had; and said Haskins was admitted as a witness in the case.

It is contended by the counsel for the defendants, that the plaintiff ought to be accountable to them for the eight hundred and fifty dollars which he so received from said Haskins, and that it should be deducted from the amount they received from him. If the court should be of that opinion, the sums to be repaid to the plaintiff will be as follows, viz:

The said James Todd will be liable for - $10,564 68

And the other defendants, in aid of said Todd, as follows, viz:

David Wescott's estate - - -	$337 50
William Wescott's estate - - -	337 50
William C. Mitchell - - -	337 50
Tristram & William C. Mitchell - -	5,384 00
Thomas Warren - - - -	337 50
William B. Gooch - - - -	2,443 18
Erastus Hayes - - - -	582 18¾
Israel Waterhouse's estate - - -	430 31¼

The seven thirty-second parts of said land which were conveyed to the plaintiff, are to be reconveyed by him to the defendants, in the following proportions, namely:

To David Wescott, one-tenth part.
" William Wescott, one-tenth part.
" Thomas Warren, one-tenth part.
" William B. Gooch, one-tenth part.
" William C. Mitchell, one-tenth part.
" Tristram & Wm. C. Mitchell, two-tenth parts.
" Erastus Hayes, one and three-quarters tenth part.
" Israel Waterhouse, one and one-quarter tenth part.

And I have prepared deeds of the same accordingly, which are herewith presented.

But as David Wescott, William Wescott, and Israel Waterhouse, are now dead, and administration has been taken on their estates, I have made the deeds of their proportions to the administrators on said estates, in trust, for the creditors and legal heirs of said deceased defendants. All which is respectfully submitted to the court.

Dated at Portland, this fourteenth day of August, A. D. eighteen hundred and forty-one.

S. LONGFELLOW, *Master.*

Whereupon, the solicitors for the plaintiff put in and file their motion for the acceptance of the same report, as follows, viz:

CIRCUIT COURT, U. S., *May Term*, 1841.

(Adjournment, *Aug.* 21.)

Plaintiffs motion for acceptance.

Otis Daniel, in equity, vs. William C. Mitchell and als.

Upon filing the report made in this cause by Stephen Longfellow, esquire, one of the masters of this court, bearing date the fourteenth day of August, eighteen hundred and forty-one, the counsel for the said complainant move that the said report, and the results therein exhibited on the first and second pages thereof, based upon the footing of the sum of eleven thousand four hundred and fourteen dollars and sixty-eight cents, and the distribution thereof in aid, ending "Israel Waterhouse's estate, five hundred and two dollars and three cents," and the matters and things therein contained in relation thereto, (except so far as the same relates to the said William

Wescott, against whom the suit is discontinued,) may be accepted, affirmed, and carried into effect, according to the true tenor and meaning thereof, unless the said defendants shall, within a certain time, shew cause to the contrary.

C. S. & E. H. DAVEIS, *Solicitors.*

Time allowed for Defendants' exception.

And thereupon the solicitor for the defendants moves for time to file exceptions to said report; and it is ordered by the court that the defendants have day until the first Monday of September next, inclusively, to file exceptions to said report.

And on the first Monday, being the sixth day of said September, the solicitor for the defendants put in and filed the following exceptions thereto, viz:

UNITED STATES OF AMERICA, *Maine District, ss:*

CIRCUIT COURT OF THE UNITED STATES.

In the matter or complaint between Otis Daniell, in equity, complainant, and William C. Mitchell and others, defendants.

Defendant's Exceptions.

Exceptions taken by the defendants to the report made August sixteenth, eighteen hundred and forty-one, by Stephen Longfellow, esquire, one of the masters of this honorable court, concerning the amount of purchase money actually paid by said Otis Daniel.

1*st Exception.*—For that it appears by the original bill, answers, and proofs in the case, that one Thomas W. Haskins was in fact the real party in interest in the purchase of one half of one-sixteenth, and actually furnished and paid in money, for, and on account of, said purchase, the sum of eight hundred and fifty dollars. That said Haskins did propose to the defendants to settle the whole controversy on certain terms, which terms were acceded to by defendants, and afterwards carried into effect by the defendants. That said Haskins has wholly released and discharged said Daniell of and from all claim and demand, to reclaim, and through him, said sum of eight hundred and fifty dollars; and the defendants ought, in equity and good conscience, not to be held to refund to said Daniell, for his own use, said eight hundred and fifty dollars, so in fact furnished said Daniell by said Haskins to pay in part of said purchase.

2*d Exception.*—Because, to enable said Daniell to recover of said defendants said eight hundred and fifty dollars, would, under all the circumstances and facts of this case, be oppressive to defendants, and is not called for by the principles of law and good conscience, as administered in a court of equity.

And therefore the said defendants except to the said master's report, and pray that the same may be so far modified or amended,

as that defendants shall not be held to refund to said Daniell any moneys paid for and on account of said Haskins.

By WILLIAM P. PREBLE,
Their Solicitor.

And said cause was thence continued to the present October term, A. D. one thousand eight hundred and forty-one; and on the first day of term, the final decree in said suit in equity was read, passed, and promulged, as follows, viz:

Final Decree.

CIRCUIT COURT UNITED STATES,
September 20th, 1841.

OTIS DANIELL, Plaintiff in Equity,
vs.
WILLIAM C. MITCHELL, and others, Defendants.

Upon the coming in of a report made in this case by the honorable Stephen Longfellow, one of the masters of this court, dated the fourteenth day of August, in the year eighteen hundred and forty-one, and upon motion made unto this court by C. S. and E. H. Daveis, of counsel for the plaintiff, and upon exceptions filed by William P. Preble, of counsel for the defendants:

It is ordered that the said report, and all the matters and things therein contained, do stand ratified and confirmed by the order, authority, and decree of this court, to be observed and performed by all the parties thereto, according to the tenor and true meaning thereof; excepting so much of the same exhibited on the first and second pages thereof, in which the defendants are held liable for the full sum of eleven thousand four hundred and fourteen dollars sixty-eight cents, without deducting the sum of eight hundred and fifty dollars, received of Thomas W. Haskins by the plaintiff; and so much of the said report as relates to the liability of William Wescott, against whom this suit is discontinued, and so much as relates to the liability of James Todd, for the portion of purchase money received by him and paid over to the said William Wescott, being the sum of three hundred and thirty-seven dollars and fifty cents.

And it is hereby further ordered, adjudged, and decreed, that the said Otis Daniell shall re-convey by deed the land so purchased by him, when and so soon as the purchase money decreed to be repaid to him, as hereinafter mentioned, shall actually be so repaid; and for that purpose shall execute a conveyance or conveyances thereof, in due form of law, to such person or persons as shall hereafter be directed by this court, to be delivered to such person or persons, when and so soon as the same purchase money shall be brought into court and be repaid to him; and that the defendants be allowed thirty days within which to pay the same; and that the said Daniell thereupon re-convey the said land to the several defendants, in the following proportions, to wit:

The estate of David Wescott, Mary Wescott administratrix, one tenth part.

The estate of Israel Waterhouse, Woodbury Storer administrator, one and one-quarter tenth parts.

Thomas Warren, one tenth part.

William B. Gooch, one tenth part.

William C. Mitchell, one tenth part.

Tristram G. and William C. Mitchell, two tenth parts.

Erastus Hayes, one and three-quarter tenth parts.

And it is further ordered and decreed, that the said James Todd be, and he hereby is, held directly liable to the said Otis Daniell in the sum of ten thousand two hundred and twenty-seven dollars and eighteen cents.

And it is further ordered, that the other defendants be, and they hereby are, held directly liable to the said Otis Daniell, in aid of the said Todd, in the following sums respectively, to wit:

William C. Mitchell, three hundred and thirty-seven dollars and fifty cents.

Tristram G. and William C. Mitchell, five thousand three hundred and eighty-four dollars.

Thomas Warren, three hundred and thirty-seven dollars and fifty cents.

William B. Gooch, two thousand four hundred and forty-three dollars and eighteen cents.

Erastus Hayes, five hundred and eighty-two dollars and eighteen and three-quarter cents.

The estate of said David Wescott, and Mary Wescott, administratrix of said estate, three hundred and thirty-seven dollars and fifty cents.

The estate of Israel Waterhouse, and Woodbury Storer, administrator of said estate, four hundred and thirty dollars and thirty-one and one-quarter cents.

And it is further ordered and decreed, that the plaintiff have execution for the sums above named, and for his costs; the said sums, when so levied upon such execution, to be brought or paid into court, and to be delivered over to the said Otis Daniell, upon his due execution and delivery of the conveyance or conveyances so as aforesaid stated in this decree.

JOSEPH STORY,
Ass. Just. of Sup. Court.
ASHUR WARE,
District Judge.

And after the passing of this decree, to wit, on the same day, the solicitor for the defendants files the following prayer for appeal therefrom to the Supreme Court of the United States of America, next to be holden at the city of Washington, in the District of Columbia, on the second Monday of January next, as follows, viz:

Defendants' claim to Appeal.

To the honorable the justices of the Circuit Court of the United States for the first circuit, within and for the State of Maine.

And now, after final decree, James Todd, being here in court, claims an appeal to the Supreme Court of the United States of America, next to be held at Washington. As also Thomas Warren, Tristram G. Mitchell, William C. Mitchell, and Woodbury Storer, as administrator, in like manner claim an appeal from said decree, so far as relates to themselves respectively.

By WILLIAM P. PREBLE,
Their Solicitor.

Appeal allowed.

Upon the filing of the foregoing prayer, together with the several bonds of the said James Todd, Thomas Warren, Tristram G. Mitchell, William C. Mitchell, and Woodbury Storer, administrator, with sureties, to prosecute their said several appeals, and which said several bonds are respectively approved—the said appeals are respectively allowed.

UNITED STATES OF AMERICA, *Maine District, ss:*

I, John Mussey, Clerk of the Circuit Court of the United States for the First Circuit for Maine District, do hereby certify the foregoing, contained on three hundred and eleven pages, as numbered, to be a true copy, as of record, of the bill, answers, exhibits, proofs, and proceedings, in the case of Otis Daniell, plaintiff in equity, against William C. Mitchell and others, defendants, determined in said circuit court, at October term, A. D. one thousand eight hundred and forty-one.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said circuit court, at Portland, on this fourth day of January, in the year of our Lord one thousand eight hundred and forty-two.

[L. S.]

JOHN MUSSEY.

UNITED STATES OF AMERICA,

Maine District, ss: First Circuit.

The Circuit Court of the United States begun and holden at Portland, within and for the Maine District, on the first day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

[L. S.]

To George S. Hillard of Boston, in the Commonwealth of Massachusetts, esquire.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize

and empower, you to take the answers to the interrogatories hereunto annexed, of Thomas W. Haskins, a witness to be produced and examined in behalf of the defendants, to be used in a certain cause now pending in said court, wherein Otis Daniell, of Boston, is plaintiff in equity against William C. Mitchell and others, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witness as aforesaid to be brought before you, and while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by said witness in your presence.

And the same, so taken and subscribed, to return together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Wiscasset, on the first day of October next.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Portland, this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

J. MUSSEY, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES, *for Maine District*, 1838.

In the matter or bill of complaint there pending, between Otis Daniell, complainant, and William C. Mitchell and als.

Interrogatories to be propounded in behalf of the respondents to Thomas W. Haskins, of Boston, a witness produced and interrogated on behalf of said complainant.

Interrogatory first. When you first went to explore the Ford tract did you, or did you not, carry letters to L. G. Fletcher, esquire, of Bingham, soliciting him to accompany you to make said exploration? Why did not said Fletcher accompany you? Was it or was it not said Fletcher who recommended it to you to take Thomas Chase, of Concord? Had you any letters to Moses Chamberlain, of Moscow, or any directions, at that time, to employ said Chamberlain as explorer? If yea, did you apply to him? Wherefore did you not apply to him, and employ him?

Interrogatory second. Did James Todd or William Wescott endeavor in any way to control you or Thomas Chase in making the exploration of the Ford tract? State particularly how, in what manner, while on the tract, or before going on, they did attempt to influence or control you. Did not you and said Chase make memorandums, from time to time, of the estimated quantities seen, and make up an account thereof, predicating your calculations thereon? Did said Todd or Wescott dissuade you from making further explorations; or did they, or either of them, advise you to continue your explorations until you were fully satisfied? Did you, or did you

not, inform said Todd, before leaving said tract, that you were satisfied, and that you should explore said tract no further?

Interrogatory third. Were you authorized by Otis Daniell and others to notify said Todd that they should take the tract, and did you, or did you not, notify him that said Daniell and others would take the same? If yea, did you not so notify him on the tract, and before leaving the same?

Interrogatory fourth. What portion of said Ford tract were you to be interested in under said Otis Daniell? What sum of money have you paid him therefor, and what sum are you still bound to pay him? When did you settle with him? If you have settled with him, how did you settle? Please state particularly the terms of the settlement. Have you any claim upon him to refund any of the money you have paid him? And if yea, upon what conditions?

Interrogatory fifth. Was, or was it not, understood and agreed between you and Otis Daniell, that one of the seven thirty-second parts deeded to Otis Daniell, was for your benefit? And in making the exploration of the Ford tract, and in agreeing to take the same, were you, or were you not, acting for yourself, as well as for the rest of the company? Have you, or have you not, since contributed your share of the expense incurred in exploring, since the bill was filed; and has, or has not, the same been prosecuted, as well for your benefit, according to your interest, as for the benefit of said Daniell? Were you, or were you not, allowed any thing for your time and trouble in making the explorations made by you since the filing of said complainant's bill.

Interrogatory sixth. State who agreed to contribute the expense of prosecuting the bill of Otis Daniell against the defendants. Were you present, and did you hear the agreement made? Did you, or did you not, state to James Todd, that all the purchasers were to contribute to prosecute and carry on said suit in equity? Were, or were not, Robert W. Molineaux, John J. Soren, Samuel N. Tenney, and William M. True, one or all of them, to contribute to the expense of carrying on said suit, and did they not so agree to do, before the filing of said bill? State any conversations you had with them, admitting or denying their agreement, to contribute, prior to January, 1837, but none since that time.

Interrogatory seventh. Did, or did not, James Todd state to you, when he gave you the certificates of Jonas Brown, Luther Moore, and John Hill, that he had no personal acquaintance with them? What other certificates did said Todd give you? Where are they? If they are not in your possession, in whose possession are they? If they are in your possession, or within your power, will you please annex them to your answer.

Interrogatory eighth. Did, or did not, said Todd state to you, that he had no knowledge of the Ford tract, and that he did not wish any company to purchase without first going on to the land, or

sending to explore it, and satisfy themselves as to the character of the tract, and the quantity of timber thereon? And did you, or did you not, afterwards inform said Todd, that the reason of your success in finding purchasers was, that they were to explore the land, and so satisfy themselves as to its character and the quantity of timber thereon.

Interrogatory ninth. Did, or did not, said Todd say and repeat to you, and in the hearing of said Otis Daniell, that he was wholly unacquainted with the Ford tract, with timber and timber lands, and with the cutting and getting of lumber? And were you, or were you not, personally, acquainted with said Todd, and the nature of his business and occupation; and do you, or do you not, know, that his business is, and has always been, that of a looking glass manufacturer.

Interrogatory tenth. Did you, or did you not, some time in the month of June, 1837, propose to the defendants, or some of them, to compromise the controversy by taking fifty per cent. of the sum originally agreed to be given? Did you, or did you not, request said Todd to get the defendants together to receive the proposition? Did you, or did you not, then say to said Todd, that the whole could be settled, if the defendants would relinquish fifty per cent? And did you, or did you not, apply to and employ Mason Greenwood, of Portland, to call upon the defendants, and make that proposition?

Interrogatory tenth. Did James Todd or William Wescott in any way induce you to make a false report of the quantity of timber on the Ford tract? If you say they, or either of them did, please state in a special, particular, and detailed manner what they did, and how they induced you to make a false report.

Interrogatory eleventh. After your return to Portland in June 1835, from exploring the land, did you, or did you not, arrange the manner of completing the business, and there agree that the notes bearing a certain date, and the deed, should be sent up to Boston, where the notes should be signed, and the deed delivered? And were, or were not the papers made out, sent up and executed in accordance with such arrangement and agreement, and at your request.

WM. P. PREBLE,
Solicitor for Defendants.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
June 19, 1838.

Received and filed.
Attest: J. MUSSEY, *Clerk.*

June 23, 1838. Served an attested copy of the foregoing, by transmitting same by mail, to Peleg Sprague, esquire, solicitor for plaintiff, with notice to file cross interrogatories, on or before the

seventh day of July next, the day on which a commission would issue herein according to the rules.

Attest: J. MUSSEY, *Clerk.*

A true copy from the original on file.

Attest: J. MUSSEY, *Clerk.*

Objections.

To the interrogatories to Thomas W. Haskins, the plaintiff objects.

To the 5th, as leading.

To the 6th, that it assumes that there was an agreement to contribute to the expense of the plaintiff's bill, and as leading—and also to all declarations and conversations therein enquired about as hearsay, and to any statements made by the witness.

To the 10th, the plaintiff objects to all declarations, conversations, offers, and propositions, of the witness sought by this interrogatory.

SPRAGUE & GRAY,
Solicitors of Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

(Memorandum.) Defendants have liberty to insert the words, "or were you" in the sixth line, and "or have you" in the seventh line, "or has" in ninth line, fifth interrogatory.

Cross Interrogatories to Thomas W. Haskins.

1st. Without waiving the plaintiffs objections to the 10th direct interrogatory, but insisting thereon, and putting this to be used only if such objections shall be overruled. If in answer thereto, you state that you made any offer or proposition to the defendants, or either of them, as therein enquired of, state whether you were ever authorized by the plaintiff to make such proposition or offer to the defendants, or any of them.

2d. If in answer to the 12th, erroneously numbered 11th direct interrogatory, you state that you arranged any manner of completing the purchase, or made any agreement as to the making of the notes, or the deed, please state whether you had any authority from the plaintiff to make any such arrangement or agreement.

SPRAGUE & GRAY,
Solicitors of Otis Daniell.

MAINE DISTRICT, *ss:*

CIRCUIT COURT, CLERK'S OFFICE,
July 5, 1838.

Received and filed.

Attest: J. MUSSEY, *Clerk.*

A true copy. Attest: J. MUSSEY, *Clerk.*

Answers to interrogatories propounded on behalf of the respondents, to Thomas W. Haskins, of Boston, the said Haskins being previously cautioned, examined, and sworn.

To the first interrogatory, he saith: I did not carry any letter to L. G. Fletcher, Esq., when I went to explore the Ford tract, soliciting him to accompany me. He did not accompany me, because I did not ask him. Said Fletcher did recommend to me to take Thomas Chase, of Concord. I had no letters to Moses Chamberlain, but I was recommended by some of my friends to employ him as an explorer. I was informed that he had gone to Canada, and did not apply to him, or employ him.

To the second interrogatory, he saith: Said Todd and Wescott did endeavor to control said Chase and myself in making the exploration of the Ford tract. Mr. Todd engaged Mr. Wescott to accompany us before consulting me, and when I objected or hesitated as to its being right, he Mr. Todd stated, to remove the hesitancy in my mind, that Mr. Wescott's going could not operate injuriously upon the purchasers, as he was not interested in the sale of the ten sixteenths which Mr. Todd offered us, but was, in company with his brother, owner of two sixteenths which he declined selling, and would be willing to join the company if they should purchase, in operating upon the land; and also, Mr. Todd stated, that Wescott was well acquainted on the tract, with its lines, boundaries, &c., and that we should find him a very efficient assistant in the woods. I therefore consented to his going. Mr. Wescott while upon the tract, and in going to it, said a great deal to induce the company to purchase the land, and to enhance its value, and I believe he was engaged by Mr. Todd and the other sellers for that purpose. He informed me, before we left the land, that he was to have five dollars a day for his services. Mr. Todd had told me that I might depend upon every thing that Mr. Wescott said. I think Mr. Wescott deceived us in showing us the land, as to sound and unsound timber. The marks by which he pretended to distinguish between sound and unsound timber, I have since ascertained to be incorrect; said Chase and I, in conjunction with Wescott, estimated the quantities of timber seen, and made our calculations thereon; but Mr. Wescott's estimate was always much larger than mine, or Mr. Chase's. Mr. Wescott induced me to give up any further exploration by saying, that the remainder was better than any we had seen, as he had seen and explored it several times. Mr. Wescott provided us with provisions, and they failed before we had finished; did not tell Mr. Todd that I was satisfied, and should explore no further; I told him I should not go on any further myself, but should send Mr. Chase and Mr. Moore, to complete the exploration.

To the third interrogatory, he saith: I was not authorized by Otis Daniell and others to notify said Todd that they should take the land, except so far as the bond authorized me. I did not notify him before leaving the land. He asked me in Portland, and I told him I

presumed the company were bound to take it, provided the two men whom I had sent, should report as favorably as I had seen.

To the fourth interrogatory, he saith: When I went down, I was to be interested under said Otis Daniell in one half of a thirty-second part. Subsequently, I agreed with him to take the whole of a thirty-second part. I have paid him eight hundred and fifty dollars, and owe him four hundred dollars more. I don't remember when I settled with him; it was more than a year ago. We settled as follows: I released him from his obligation to deed me any portion of the land, and he released me from all liabilities in regard to the land, over and above twelve hundred and fifty dollars.

To the fifth interrogatory, he saith: There was no agreement between Mr. Daniell and myself, when I went to explore, that I was to have a thirty-second part, or that one of the parts should be for the benefit of me. I had the offer from him to take one half of a thirty-second part. I acted for myself, so far as the little interest which I was in hopes to have extended. I have not contributed anything towards the expense of exploring since the bill was filed, and the same has not been prosecuted for my benefit at all. I was paid my expenses for exploring after the bill had been filed, but nothing more. Nothing was said about any further compensation, but I have made a charge for my time.

To the sixth interrogatory, he saith: I do not know who agreed to contribute to the expense of carrying on the bill of Otis Daniell against the defendant; I was present when the agreement was talked about, but I went away before there was any conclusion. I told Mr. Todd, that I had understood that the purchasers were to contribute to the expense of carrying on the suit. I do not know that said Molineaux, Soren, Tenney and True, or any of them, were to contribute to the expense of carrying on said suit. I do not remember having had any conversations with any of them upon the subject, prior to January, 1837.

To the seventh interrogatory, he saith: I do not recollect whether said Todd said anything about his being acquainted with said Brown, Moore, and Hill, when he gave me the certificates. He said that he did not know the signers of some of the certificates, but that Mr. Wescott did, and they might all be depended upon. I don't remember what certificates Mr. Todd gave me. He gave me several. They are not in my possession. I think I gave them to Mr. Daniell, and I believe some of them are among the papers belonging to this case.

To the eighth interrogatory, he saith: Said Todd told me he had no personal knowledge of the tract, but I do not recollect his saying, that he did not wish any persons to purchase, without going on and satisfying themselves by exploring. He said he had perfect confidence in the tract, and had no doubt that the timber would overrun in quantity what he was willing to guaranty. I did not tell Mr. Todd that the reason of my success in finding purchasers was, that

they were to explore the land, and so satisfy themselves as to its character, and the quantity of timber thereon.

To the ninth interrogatory, he saith: I remember that Mr. Todd did say once, that he was not personally acquainted with the Ford tract. I don't remember that he ever said he was not acquainted with timber, timber lands, and the getting of lumber. I don't remember hearing him say in the presence of Mr. Daniell, that he was not acquainted with the Ford tract. I knew that Mr. Todd's business was, and had been, that of a looking glass manufacturer.

To the tenth interrogatory, he saith: I went to Portland in June, 1837, at the request of the company, desiring to compromise the matter, but without authority to offer any specific terms. I called upon Mr. Greenwood, and asked him to lend me his influence in obtaining a compromise. He told me he thought it might be compromised at fifty cents, and my opinion was, that the company would compromise on those terms; but I made no offer. I suppose Mr. Greenwood saw Mr. Todd, as Mr. Todd afterwards called upon me, and said Mr. Greenwood had made great efforts to make him and his associates compromise at fifty per cent., but they were not prepared to do it, and wanted me to make an offer. Then I told him I was not authorized to make any proposals, but that I would undertake to make one on my own responsibility, which was, that the notes should be given up, the land re-conveyed, and the company lose the quarter part they had paid. He took the proposition to his associates, but they declined it. An offer was afterwards made on the part of some of the associates to compromise at fifty per cent., but Mr. Daniell declined it.

To the eleventh (erroneously marked tenth,) interrogatory, he saith: I was innocently induced to make a false report, by the false and exaggerated statements of Mr. Wescott, who showed us the same trees more than once, and led us off the land as I believe; and as Mr. Todd advised us to engage Mr. Wescott, he was instrumental in producing this false report, though my feeling was, that he had no intention of deceiving me. This is the only way I can answer this question.

To the twelfth (erroneously marked eleventh,) interrogatory, he saith: The business was all done by Mr. Todd, I merely assisting him. I don't recollect making any agreement. Mr. Todd brought up the deeds and notes to Boston, and returned with them to Portland to have some alteration made in them; came back to Boston, delivered the deeds, and returned with his notes and money.

Answers to Cross Interrogatories.

To the first cross interrogatory, he saith: I was not authorized to make any offer, as I have already stated.

To the second cross interrogatory, he saith: I made no such arrangement or agreement, and had no authority to make such.

THO'S. W. HASKINS.